

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 19-CR-223(BMC)
: :
-against- : United States Courthouse
: Brooklyn, New York
: :
AKMAL NARZIKULOV, : Tuesday, July 6, 2021
: 9:30 a.m.
Defendant. :
: :
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE, AND A JURY

A P P E A R A N C E S:

For the Government: JACQUELYN M. KASULIS, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: VIRGINIA NGUYEN, ESQ.
F. TURNER BUFORD, ESQ.
Assistant United States Attorneys

For the Defendant: LAW OFFICE OF PETER GUADAGNINO
Attorney for the Defendant -
Akmal Narzikulov
30 Wall Street
8th Floor
New York, New York 10005
BY: PETER J. GUADAGNINO, ESQ.
ILEANA MONTES, ESQ.

Proceedings

1307

Court Reporter: Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter
Telephone: (718) 613-2487
Facsimile: (718) 613-2694
E-mail: Anthony_Frisolone@nyed.uscourts.gov

Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Proceedings

1308

1 (In open court.)

2 (Defendant present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 19-CR-223, *United States of America*
9 *against Akmal Narzikulov*.

10 Counsel, please note your appearances for the
11 record.

12 MS. NGUYEN: For the United States of America,
13 Assistant United States Attorney Virginia Nguyen.

14 Good morning, your Honor.

15 MR. GUADAGNINO: Peter J. Guadagnino for Akmal
16 Narzikulov.

17 Good morning, your Honor.

18 (Defendant enters the courtroom at 9:37 a.m.)

19 THE COURT: Good morning.

20 MS. NGUYEN: Good morning.

21 MR. GUADAGNINO: Good morning.

22 THE COURT: I have a question. Is there anybody
23 here that hasn't been vaccinated or doesn't want to say
24 whether they've been vaccinated? Raise your hand. The jury
25 isn't vaccinated, but since we all have been we don't have to

Proceedings

1309

1 wear masks.

2 First, with regard to the missing witness proposed
3 instruction from the defense, anyone need to be heard further
4 on that?

5 MS. NGUYEN: No, your Honor.

6 MR. GUADAGNINO: No, your Honor. Thank you.

7 THE COURT: All right. Having read the parties'
8 submissions, I'm not going to give the instruction because I
9 think the witness is not really missing. The witness is
10 unavailable.

11 I accept the Government's proffer that Mr. Kaley has
12 conferred with his client and the client would decline to
13 testify, and I also note that I know Mr. Kaley and I have
14 confidence that if that's what he's telling the Government
15 then it is the case.

16 So he is -- this witness is equally unavailable to
17 both sides. There's nothing the Government has done it
18 procure his nonattendance and, therefore, I think it would
19 distort what was really happening here if we gave that
20 instruction to the jury.

21 I will give the standard instruction about not every
22 witness has to be called and both witnesses have access to the
23 evidence that both sides have access to the evidence that
24 there is.

25 Okay. Now, with regard to the charging conference.

Proceedings

1310

1 MR. GUADAGNINO: Your Honor, may I?

2 THE COURT: Yes.

3 MR. GUADAGNINO: Does that include the defense is
4 precluded from arguing?

5 THE COURT: It does.

6 MR. GUADAGNINO: Okay.

7 THE COURT: It does. Because it's just not fair.
8 The witness is not missing, so it would be an unfair argument
9 to make.

10 Okay. Let's go over the charge and I think everyone
11 has a copy. The first part, as I said, is just mostly, you
12 know, standard that goes up through Page 21 in my copy of it.
13 Anyone have any comments up through Page 21? I'm going to
14 wait a few seconds. It's 21 pages. We'll note that we sent
15 out the charge before the weekend and the only thing that's
16 been changed is we have included the two supplemental charges
17 that the Government asked for over the weekend.

18 MR. GUADAGNINO: In terms of, your Honor, up until
19 Page 21 there's two sections that appear to be similar.
20 Sectioning F, which is evidence or witnesses not presented by
21 equally available; and then there's H, uncalled witnesses
22 equally available to both sides.

23 THE COURT: Give me the two pages for that.

24 MR. GUADAGNINO: The first one is Page 12 and the
25 second one is Page 19, your Honor.

Proceedings

1311

1 THE COURT: Okay. Give me just a second.

2 MR. GUADAGNINO: Okay.

3 (A brief pause in the proceedings was held.)

4 THE COURT: It does seem to me they overlap
5 unnecessarily. What if I take out H on Page 19?

6 MR. GUADAGNINO: Yes, your Honor. That's acceptable
7 to the defense.

8 MS. NGUYEN: Your Honor, could we include one
9 sentence from Paragraph H which is you should not draw any
10 inferences or reach any conclusions as to what they would have
11 testified to had they been called. We otherwise agree there
12 is some overlapping.

13 THE COURT: Okay. We'll move that sentence and
14 insert it after the first sentence on Page 12, Paragraph F. I
15 think that'll give us one complete charge instead of two
16 overlapping charges.

17 Okay. Anything else up to Page 21?

18 MR. GUADAGNINO: Not from the defense, your Honor.

19 MS. NGUYEN: Nothing from the Government, Judge.

20 THE COURT: Okay. Anything on Page 22?

21 MR. GUADAGNINO: Not from the defense, your Honor.

22 THE COURT: You don't need to give me a negative on
23 these. I'll wait a minute, and if I don't hear from anybody
24 I'll go on to the next page.

25 MR. GUADAGNINO: Okay.

Proceedings

1312

1 THE COURT: Page 23? Page 24? Page 25? Page 26?
2 Page 27? Page 28? Page 29? Page 30? Page 31? Page 32?
3 Page 33? Page 34? Page 35? Page 36? Page 37? Page 38?
4 Page 39? Page 40? Page 41?

5 MS. NGUYEN: Yes, your Honor.

6 THE COURT: Okay.

7 MS. NGUYEN: In the fourth line of Page 41, to
8 says -- it refers to assets from a business.

9 THE COURT: Right.

10 MS. NGUYEN: Can we have assets from a business or a
11 person.

12 THE COURT: I think that's accurate.
13 Mr. Guadagnino.

14 MR. GUADAGNINO: No objection, your Honor.

15 THE COURT: Okay. Anything else on 41?

16 MS. NGUYEN: In the next sentence, it says, if the
17 defendant's actions affected a business's ability to continue
18 to operate.

19 THE COURT: Yes. How do you want to change that?
20 Do you want to take it out.

21 MS. NGUYEN: Our proposal would be to delete that
22 whole sentence.

23 THE COURT: Right. I'm also inclined to change the
24 word "business" from the preceding sentence instead of
25 inserting or a person just take out business. I don't think

Proceedings

1313

1 that's this case, right.

2 MS. NGUYEN: That's fine with the Government as
3 well.

4 MR. GUADAGNINO: That's fine with the defense.

5 THE COURT: All right. So we'll take out "business"
6 in the preceding sentence, put in, "From a person," and then
7 we'll take out the next sentence.

8 Anything else on 41? 42? 43? 44?

9 MS. NGUYEN: Your Honor?

10 THE COURT: Yes.

11 MS. NGUYEN: Page 44 has the same instruction about
12 the business and the person.

13 THE COURT: Okay. We will change business to person
14 and take out the next sentence.

15 Anything else on 44? 45? 46? 47? 48? 49? 50?
16 51? And then anything on 52 through 53?

17 MR. GUADAGNINO: Your Honor?

18 THE COURT: Yes.

19 MR. GUADAGNINO: Are we on the verdict sheet?

20 THE COURT: We're not there but we're almost there.

21 MR. GUADAGNINO: Okay.

22 THE COURT: Although, I don't seem to have a verdict
23 sheet.

24 MS. NGUYEN: Your Honor, if it's the same that was
25 distributed on Friday we have an extra copy.

Proceedings

1314

1 THE COURT: Okay. Hand it to one of my interns,
2 please.

3 Okay. Go ahead, Mr. Guadagnino.

4 MR. GUADAGNINO: Your Honor, simply, it's just a
5 matter of form. We had submitted the defense had submitted a
6 request for the verdict sheet to have the words, "not guilty"
7 come before the words guilty based on the presumption of
8 innocence and the burden of proof, people read from left to
9 right.

10 It's kind of like a psychological thing where you
11 know that the jury is supposed to follow the law and the
12 Court's instruction to have a cloak of innocence, presumption
13 of innocence, if they and unless and until the Government gets
14 to that burden maybe from left to right, not guilty/guilty,
15 that's our thinking.

16 THE COURT: What's the Government's position on it?

17 MS. NGUYEN: The Government defers to the Court. We
18 don't see a difference in either version.

19 THE COURT: I've been asked this before, and
20 generally, I don't do it only because for 800 years of
21 Anglo-American history, jurors have been asked guilty or not
22 guilty.

23 If nobody objects I don't mind changing it.

24 MR. GUADAGNINO: Thank you, your Honor.

25 THE COURT: We'll change that. Okay. Anything else

Proceedings

1315

1 we need to do with regard to the change.

2 MR. GUADAGNINO: No, your Honor, not from the
3 defense.

4 THE COURT: I'm sorry.

5 MR. GUADAGNINO: It has nothing to do the charge,
6 but we have a stipulation as to the unavailability of that --
7 I'm sorry, Mr. Giyasov is in the United States, present in the
8 United States. And that goes to the issue of the inference
9 that he's not in the country so we do have a stipulation,
10 right.

11 MS. NGUYEN: Yes.

12 THE COURT: So is it a joint stipulation so I should
13 read it to the jury?

14 MR. GUADAGNINO: That's fine, your Honor.

15 MS. NGUYEN: I think that would be the best at this
16 stage.

17 THE COURT: Hand it to my clerk and I will read it
18 before closing arguments and then you can go into closings.

19 MR. GUADAGNINO: Thank you, your Honor.

20 THE COURT: I think we've established we're going to
21 have government, defense, government rebuttal for closings.

22 MR. GUADAGNINO: Yes, your Honor.

23 MS. NGUYEN: Yes.

24 THE COURT: All right. Very good. See you in a few
25 minutes.

Proceedings

1316

1 (Defendant exits from courtroom at 9:56 a.m.)

2 (A recess in the proceedings was taken.)

3 (Defendant enters the courtroom at 10:50 a.m.)

4 COURTROOM DEPUTY: All rise.

5 THE COURT: Both sides ready for closing argument?

6 MR. GUADAGNINO: Yes, Your Honor.

7 MS. NGUYEN: Yes, Your Honor.

8 THE COURT: Bring in the jury, please.

9 (Defendant enters the courtroom at 10:53 a.m.)

10 THE COURT: All right, everyone. Be seated, ladies
11 and gentlemen. Hope you had a good 4th of July.

12 Before we begin with closing arguments, the parties
13 have agreed on what we call a stipulation. That's a statement
14 of fact that both sides agree as true and that you should
15 know. It's part of the evidence in this case. And as I'll
16 tell you later, when you have a stipulation you should accept
17 this fact as true.

18 What the parties have stipulated to is that Firdavs
19 Giyasov, you remember who he is, Firdavs Giyasov is presently
20 in the United States. And that's the Court's stipulation,
21 Government Exhibit 701, that's part of the evidence.

22 Okay. We will now proceed with closing arguments.
23 The Government will go first.

24 MS. NGUYEN: The defendant TAZED and abducted
25 Firdavs Giyasov in broad daylight. He dragged Firdavs's body

1 first by the hair and then by the chin to a getaway car just
2 so he could get back a couple of thousands of dollars that
3 Firdavs had stolen. He did not care who saw him, and he did
4 not care about the consequences.

5 When the defendant learned after the fact that Jasur
6 Kamolov had tried to get in between him and his money. When
7 he learned that Jasur had warned Firdavs the night before that
8 the defendant was looking for him, he threatened Jasur with a
9 gun. Threatened to kill Jasur until Jasur agreed to pay him
10 some money, too.

11 He was willing to do all of this just to protect his
12 business helping others cheat to get licenses from the DMV and
13 the TLC. Then, on top of all of that, after he was arrested
14 for kidnapping, the defendant made plans to pay off not just
15 one witness but two witnesses in a corrupt attempt to keep
16 those witnesses from testifying against him.

17 Ladies and gentlemen, Akmal Narzikulov believes he
18 is before the law and it is time to held him accountable.

19 For some time, he had been running a scam to help
20 people cheat on their licensing test. It was a successful
21 scam. He got paid hundreds, sometimes thousands of dollars
22 from individual clients who were willing to cheat their way to
23 a license. He got paid well because he figured out the
24 perfect way to cheat. The test offered by the DMV are
25 different for every person, the questions change each time;

1 that's the same way for the TLC tests that PSI offers.
2 They're designed so that no two test takers see the exact same
3 test and the defendant had a solution to that. He used
4 smartphones and he connected them to hidden wires that go
5 around the person's neck under their shirt. Those wires were
6 synced to hidden wireless earpieces. Using Velcro affixed to
7 the back of those phones, they would stick onto T-shirts and
8 those T-shirts each had a tiny little peephole cut out so that
9 the test questions could be seen through the camera of the of
10 the phone. Then a voice would come through the earpiece to
11 give the test takers the correct answers. Pictures of that
12 equipment are shown here in Government's Exhibit 302-A at
13 Page 53 and Government Exhibit 263.

14 We know all about how the cheating scam worked from
15 the testimony of Jasur and Firuz we know how it worked from
16 the cheaters who were caught by the TLC test proctors working
17 at PSI. And we know from examining the equipment that those
18 cheaters brought with them. We know the equipment wasn't
19 cheap. We know this because the defendant exchanged
20 screenshots in his chats with his co-conspirators using a
21 Samsung cell phone that was found in his apartment. That cell
22 phone is Government Exhibit 309, and these images were
23 extracted from that cell phone. These pictures come from
24 exhibits 309.10 and 309.8. Each one of those sets of wires
25 and earpieces could sell for \$400. Ten earpieces sell for

1 250. We know from the evidence that was found in the
2 defendant's apartment that he had dozens of these neck wires
3 and dozens of these earpieces all over the place. And you can
4 examine those pieces of equipment for yourself, they are in
5 evidence in Exhibits 319, 320, and 321.

6 But the cost of the equipment wasn't a big deal; the
7 defendant could certainly afford it. He was paid a lot of
8 money for his services. According to Jasur, the defendant
9 would charge between \$800 to \$1,200 just for the CDL written
10 test. Jasur himself paid \$7,000 to get past the CDL road
11 test. And look at the pictures in the defendant's phone
12 showing his bookkeeping entries. This is a picture from
13 Government Exhibit 309.9 from a data extraction from a Samsung
14 cell phone in the defendant's apartment.

15 You can see the defendant services he offered. This
16 page shows entries for two TLC tests and two CDL licenses.
17 You can see the prices he listed for these services. In some
18 cases, you can tell the difference between the total price and
19 the deposit he collected from the client.

20 Here's another example from the defendant's cell
21 phone in 309.9. Again, the types of services are written down
22 the right side of the page. We see here he's offering three
23 CDL licenses, two Class D licenses, and one TLC license with
24 the prices listed right there next to the individual clients'
25 phone numbers. If you want to examine some of the defendant's

1 ledgers, they are in evidence, too, at Government Exhibit 305.
2 In those note notebooks, you'll see references to CDLs and
3 contact information, phone numbers, for various clients.

4 For his involvement in the cheating scam, the
5 defendant is guilty of conspiracy to unlawfully produce
6 identification documents. To be guilty of that crime, the
7 Government has to prove certain elements and the Court will
8 explain each of those elements to you.

9 But let me briefly review how the evidence has
10 established the defendant's guilt.

11 First, there's no dispute that CDLs and TLC licenses
12 are forms of identification and there's no dispute that the
13 defendant did not have authority to produce CDLs or TLC
14 licenses.

15 Second, the evidence has proven that the defendant
16 fraudulently caused those licenses to be produced by helping
17 applicants cheat.

18 Now, he doesn't have to be the one physically
19 producing or physically creating the licenses. Just by having
20 his co-conspirators help to cheat, the defendant was
21 fraudulently causing these identification documents to be
22 produced.

23 And finally, we know that the CDLs and the TLC
24 licenses were sent to the applicants by United States mail,
25 the postal service, and we know this from the testimony of the

1 employees of the DMV and the TLC.

2 By participating in this conspiracy, the defendant
3 made thousands of dollars. You can see how he bundled his
4 earnings into bunches of hundred dollar bills and bunches of
5 \$50 bills. That's here on Page 42 of Exhibit 302-A.

6 He made so much money he couldn't be bothered to
7 count it all, to bundle it. Money was found strewn all over
8 the apartment. That's shown here on Page 38 of Exhibit 302-A.

9 Clearly, his illegal he business was thriving. He
10 had so many clients lined up, he needed to expand the
11 operation and enlist some help. Murod, whose full name is
12 Murodjon Sultanov, was one of the people who participated in
13 the conspiracy with the defendant. The defendant made
14 arrangements for Murod to drive Jasur all the way to
15 Pennsylvania so that Jasur could sign the certificate saying
16 that he passed the CDL road test when, in fact, no such road
17 test had ever taken place. Murod helped people cheat on TLC
18 tests at PSI. People like Jasur's brother and Shukhrat
19 Toshtemirov. Do you remember Shukhrat Toshtemirov, he is the
20 man who went to the PSI testing facility in Brooklyn on
21 April 1st and he was the one who got caught by Saleema Jones
22 and her co-worker.

23 When Ms. Jones and her co-worker looked at the phone
24 that Mr. Toshtemirov pulled out from under his T-shirt, they
25 saw a bunch of calls to Owl White Boss. That's shown here in

1 it Government Exhibit 266. We know from all of the records
2 Murod is Owl White Boss. Shukhrat Toshtemirov is also one of
3 the dozens of people who had driver's licenses photocopied or
4 photographed in the defendant's phone. All of the data that
5 was extracted from a Samsung phone found in the defendant's
6 apartment. This is from exhibit 309.11 data from the cell
7 phone. And there's a picture of Shukhrat Toshtimirov's New
8 York State driver license.

9 We also know that Murod and the defendant were in
10 business together because the defendant had Murod's bank
11 account information right here in this green notebook that was
12 found in the defendant's apartment. It had the account
13 number, the routing number, Murod's name, and the Owl White
14 Gmail address.

15 And we also know that Murod and the defendant tested
16 one another about what equipment to buy for cheaters. And
17 let's not forget the business records that we saw from PSI.
18 Government Exhibit 277 shows that in a period of just over a
19 year, Owl White Boss used his Chase credit card to pay PSI for
20 about 50 different TLC tests. All of those different tests,
21 and those different applicants, are listed right here in
22 Exhibit 277.

23 But Murod wasn't the only member of the conspiracy.
24 There was the defendant's brother in Uzbekistan. He
25 negotiated prices with clients over the phone and he provided

1 answers to test takers over the earpieces. Jasur told us that
2 in his testimony at Pages 796 to 800 of the trial transcript.

3 There was also Firuz. Firuz was probably the first
4 person the defendant hired to work for him. After Firuz quit,
5 the defendant had other people to help him with his scam. He
6 hired Sukhrob, Sherzod, Jasur, and finally, Firdavs.

7 But Firdavs was different from all of the others who
8 worked before him. Firdavs was disrespectful. He stole money
9 from the defendant. And not just that, but he threatened to
10 report the defendant to the police about the cheating scheme
11 in the defendant tried to get his money back. That's what
12 Firuz testified to at Page 362 of the trial transcript.
13 Firdavs stole a couple of thousands of dollars from the
14 defendant and then he took off. He hopped on a Greyhound bus
15 on December 21st and rode all the way across the country to
16 sunny Los Angeles, California. That's shown here in Exhibit
17 296.

18 In February, just a couple months later, Firdavs
19 deposited the cash that he hadn't spent and decided to fly
20 back to New York and it wasn't even a full two months. We can
21 tell from the Bank of America account statement for Firdavs
22 Giyasov for the period of January '19 to February 15, 2019.
23 The full statement can be found in Government Exhibit 214 at
24 pages 11 to 14 if you want to look again. But you can tell
25 from this page that in early February while he was still in

1 southern California, Firdavs deposit \$1,500 in cash into his
2 bank account. And then, just a few days later, shown there at
3 the bottom, by February 8th he was at the airport heading back
4 to New York.

5 The defendant could not just stand by and let
6 Firdavs get away with this. Just imagine if word got out
7 there that there's no penalty for anyone who steals from Akmal
8 Narzikulov. If Firdavs could get away with it, what would
9 stop Sherzod or anyone else who worked for the defendant from
10 stealing from him. The defendant needed to take action. He
11 rounded up his men, Sukhrob and Sherzod, and made sure that
12 Firdavs would pay for what he had done. Pay both literally
13 and figuratively. Exhibit 23 shows us exactly how the
14 defendant made Firdavs pay.

15 (Video file played in open court.)

16 (Video file concludes.)

17 MS. NGUYEN: As you watch this video, notice when
18 Firdavs is coming back into the building. Firdavs began
19 sprinting away from the defendant and Sukhrob before either of
20 them had even laid a finger on him. And that's because
21 Firdavs knew what they had planned for him. Jasur had warned
22 him the night before. Firdavs knew he was in danger. He got
23 past the first door, but then he got trapped in the vestibule
24 because he didn't have the key fob to get past that second
25 door into the building.

1 And here, you can tell he's starting to cry out for
2 help because there's that woman on the right side of the
3 lobby, she comes around the corner because she heard
4 something. She couldn't see it because there was a wall
5 between her and the vestibule, but she turned the corner and
6 took a look and she ignored it.

7 You can see the amount of force that the defendant
8 and Sukhrob had to use to subdue Firdavs. Firdavs was holding
9 on to that door handle with all of his strength. You can see
10 why they thought they needed to use the TASER to sap the
11 remaining strength identity of Firdavs.

12 (Video file played in open court.)

13 (Video file concludes.)

14 MS. NGUYEN: Once Sherzod came back with the TASER,
15 watch what happens on the left side through the glass door of
16 the vestibule. You can pinpoint a moment when Firdavs's legs
17 go limp. That was his body's reaction to being TAZED.

18 That kidnapping wasn't a spur-of-the-moment
19 decision, the defendant had been plotting his move against
20 Firdavs since the night before when he learned that Firdavs
21 was back in town. That night, when they spent hours sitting
22 in Jasur's Sienna waiting for Firdavs to show up at his
23 building so that the defendant could catch Firdavs and force
24 him to pay. To kick off his plan, the defendant had Sukhrob
25 fetch Jasur from Jasur's house late at night. From there,

1 Sukhrob and Jasur drove to the defendant's place in the white
2 Toyota Camry. Then the defendant got into the car with them
3 and they drove back to Jasur's house so that they could switch
4 cars. The defendant wanted to use Jasur's Toyota Sienna
5 instead of his white Toyota Camry. And that's because the
6 defendant had already worked out a plan that required using
7 someone else's car. He wanted to Firdavs off guard, but
8 Firdavs had worked for the defendant and Firdavs would be able
9 to recognize any of the defendant's cars. If the defendant
10 used one of his own cars to lay in wait, he would lose the
11 element of surprise and that's why he needed to switch cars.
12 That's why he needed Jasur's Toyota Sienna. Jasur agreed to
13 switch cars and the three men went off to see Firdavs's
14 friend.

15 Now, this person was hardly a friend. As Jasur
16 said, the so-called friend sold out Firdavs quite quickly.
17 The friend called Firdavs, put him on speakerphone, and the
18 defendant learned that Firdavs would soon be coming home.

19 So the defendant and Sukhrob had Jasur drive them
20 over to Firdavs's apartment building. From there, Jasur had
21 managed secretly to text Firdavs and tell him not to come
22 home. He was able to relax once he knew Firdavs had gotten
23 the message and would be safe. So even when he saw the bat
24 and the TASER that Sukhrob and the defendant had brought into
25 the car with him that night he didn't worry too much. He knew

1 Firdavs wasn't coming home. As they waited, the defendant
2 called for reinforcements. He called Firuz. He told Firuz to
3 come meet them. He told Firuz the plan was to catch Firdavs
4 and make Firdavs pay now, all four men were sitting, waiting
5 in Jasur's car, waiting for Firdavs to show up. Only one of
6 those men, Jasur, knew that Firdavs was not actually going to
7 show up.

8 Still, Jasur tried to convince the defendant that
9 this was a bad idea. At Page 831 of the transcript, Jasur
10 testified, "I told Akmal don't do it, it's not worth it. I
11 told him this kid will go to the cops and rat about you."
12 Akmal said, "I don't give a fuck." Firuz testified to the
13 same thing at Page 356 of the trial transcript. Firuz said
14 that Jasur told the defendant to leave Firdavs alone because
15 he might file a report and he could put people in jail. Even
16 Sukhrob told defendant not to do it.

17 After hours of waiting, until around 6:00 in the
18 morning Jasur was finally able to convince them it was time to
19 go home and they went their separate ways. Just a few hours
20 later, the defendant called Firuz again to convince Firuz to
21 come back them to lay in wait for Firdavs as Firdavs went to
22 won't Firuz refused this time but he did agree to let the
23 defendant use his car.

24 Again, the switching of the cars was a key part of
25 the plan because if the defendant used one of his cars,

1 Firdavs would recognize it right away. So when the defendant
2 showed up to Firuz's building that morning in his Ford Escape,
3 Firuz agreed to switch cars with the defendant and he handed
4 over the keys to his gray Toyota Camry. And we saw in the
5 video what happened next. Even without audio you can tell
6 just what happened and who did what. Here, you have Firdavs
7 trying to run towards safety. Then there's the defendant and
8 Sukhrob forcibly dragging Firdavs outside. But Firdavs didn't
9 come quietly that's why Sukhrob asked Sherzod to go get the
10 TASER that they had left behind in the car. Sherzod returned
11 with the TASER, leaving Firuz's gray Toyota Camry double
12 parked on the street for a quick getaway. And you can see the
13 corner of Firuz's gray Toyota Camry right here double parked
14 on the street. Finally, the defendant and Sukhrob slowly
15 dragged Firdavs's body over to the car where you can see
16 Sherzod still waiting.

17 What followed after that was a torturous few hours
18 for Firdavs. The defendant and his co-conspirators took
19 Firdavs from one place to another all over Brooklyn in their
20 attempt to extort money from him. We know that after the
21 kidnapping, Sherzod drove Firuz's car back to Firuz while
22 Firdavs was trapped in the back seat surrounded by Akmal and
23 Sukhrob unable to escape. When they got to Firuz's building,
24 Firuz switched places with Sherzod. Sherzod left and Firuz
25 drove everyone to see a notary at the UZ Wireless store on

1 Kings Highway and West 10th Street. Firuz testified that he
2 didn't know exactly what papers were being notarized or what
3 was going on.

4 (Continued on the next page.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MS. NGUYEN: The defendant was forcing Firdavs
2 Giyasov, to sign a debt acknowledgment letter for \$5,000, and
3 this letter is part of Exhibit 304. We know from this letter
4 that Suhkrob also helped. And what's so interesting about
5 this letter, what's so telling, is that the debt, the supposed
6 \$5,000 debt, it's not made out to the defendant, it's made out
7 to his mother. Because that's what the defendant does, he
8 hides his own actions behind his mother's name. He used his
9 mother's name to register his two cars. He used his mother's
10 name to buy a gun. And now he was using his mother's name to
11 claim his extortion money. If this had been a legitimate
12 loan, the debt acknowledgment letter would have been made out
13 to the defendant, but this letter was not a legitimate
14 agreement between a lender and a borrower. This letter is
15 evidence of the extortion of Firdavs Giyasov.

16 Now, after they got the notarized letter at
17 UZ Wireless, they took Firdavs to the Bank of America branch
18 located on Kings Highway. They went there to open a small
19 business account so that Firdavs could deposit a \$2100 check
20 made out to his business, Fred Sell Service, Inc. And we know
21 that they got to the bank at about 11:00 a.m., and you can see
22 that the whole process of opening an account at the bank took
23 about an hour and 15 minutes. You can compare the time stamps
24 on pages 2 and page 15 of Exhibit 217.

25 After that hour and 15 minutes when Firdavs finished

1 opening the business account all under the watchful eyes of
2 the defendant, he was giving a temporary debit card and some
3 temporary checks. That's when the defendant and his
4 accomplices forced Firdavs to sign one of those temporary
5 checks for \$1,000. Firuz fill out the rest of the check and
6 wrote it out to himself. That check is shown in
7 Government Exhibit 216.

8 After the Bank of America, Firuz drove everyone to a
9 check cashing place. Government Exhibit 236 is from the
10 Pay-0-Matic check cashing place on Kings Highway. And you see
11 Firuz in his orange coat with the blue sleeves and the furry
12 hood. From watching the video, you can tell Firuz wasn't able
13 to cash the check. You can see the teller examine the check
14 and consult with his coworker on the right. And again, even
15 without the audio, you can tell what's happening. You can see
16 the teller try to explain to Firuz that because this was a
17 temporary check without a payer name and address on the top,
18 they wouldn't be able to help him. The teller even tries to
19 show him an example of a valid check, one with an address and
20 a payer name. So Firuz walks out of the Pay-0-Matic without
21 any money. That's just what he told us during his testimony
22 at page 375.

23 After the Pay-0-Matic, it was now 1:00 p.m. The
24 defendant and his men had been holding Firdavs hostage for
25 over five hours, since 7:40 that morning. When the defendant

1 finally agreed to release Firdavs, he still kept Firdavs' most
2 valuable property, his wallet and his cell phone. The
3 defendant knew that Firdavs would agree to pay the defendant
4 money in order to get that property back. This was all part
5 of the extortion.

6 After they released Firdavs, Firdavs went home and
7 changed his clothes. Then he went to the 61st Precinct to
8 report what had happened. And we know this from the fact that
9 the clothes he was wearing when he went to the Bank of America
10 that morning are different from the clothes that he was
11 wearing when the police took photographs of him at the 61st
12 Precinct. Just compare page 10 of Government Exhibit 217 at
13 the bank with Government Exhibit 107, taken at the 61st
14 Precinct. By the time Firdavs was at the precinct, he had
15 changed into a light gray sweatshirt with the words "Breaking
16 News" across the front.

17 After the police station, Firdavs contacted the one
18 person he knew he could trust, Jasur, the friend who had
19 warned him the night before not to come home. And because
20 Firdavs didn't have his cell phone anymore, he could only
21 contact Jasur using his computer at home. Firdavs used
22 Facebook Messenger to reach out to Jasur. And you can see
23 that from Exhibit 515-A, this shows that Firdavs was using a
24 personal computer, a PC, to communicate with Jasur beginning
25 at about 8:30 p.m. on March 28th.

1 Now, this Facebook Messenger chat was extracted from
2 Jasur's cell phone. That's in evidence as Government Exhibit
3 604, FBI Item 1-B-54. Exhibit 515-A shows the extraction of
4 their Facebook Messenger chat in Tajic, with the specific
5 times and the specific communications between Jasur and
6 Firdavs. The English translation of this chat is in Exhibit
7 515-B. By looking at those two exhibits together, we can
8 piece together the specific timeline of events on the night of
9 the kidnapping.

10 At 8:30 p.m., Firdavs reached out to Jasur, they
11 chatted back and forth. At around 8:34 p.m., Jasur said to
12 Firdavs that he was going to come over. Jasur told Firdavs it
13 would take him about ten minutes to get there. Then, at
14 around 8:42 Jasur tried to call Firdavs, probably to tell
15 Firdavs to come outside, but they never connected. We know
16 from Jasur's testimony at page 835 that the reason they never
17 connected was because when Jasur drove past Firdavs's building
18 that night, he saw the defendant's white Toyota Camry and
19 Jasur didn't want to have the defendant know that Jasur was in
20 touch with Firdavs, so Jasur kept on driving past.

21 Meanwhile, by 8:45 p.m., Firdavs was already
22 planning to go meet Jasur, so he was already heading outside
23 his building to find Jasur, but instead of finding Jasur,
24 Firdavs ran into Firuz. And you can see that in
25 Government Exhibit 25. You can see Firuz and his orange

1 jacket. Firuz explained during his testimony at page 379 that
2 the defendant had sent Firuz to find Firdavs, and Firuz ran
3 into Firdavs as Firuz was trying to get into the building.
4 Firuz testified that the defendant wanted to talk to Firdavs.
5 He couldn't recall the details, but we know from
6 Government Exhibit 27 that the meeting between Firdavs, Firuz
7 and the defendant was short, because in Government Exhibit 27,
8 less than ten minutes after Firuz and Firdavs ran into each
9 other at the service entrance, you can see Firdavs coming back
10 into the building alone at 8:55 p.m. wearing that same
11 "Breaking News" sweatshirt.

12 Meanwhile, as Jasur was driving home after his
13 failed attempt to meet Firdavs, he got a call from the
14 defendant. The defendant wanted to meet. Jasur agreed and
15 they met at a nearby Walgreens parking lot. Jasur got into
16 the white Camry and he saw both the defendant and Suhkrob.
17 The defendant presented Jasur with proof that Jasur had
18 double-crossed him. The defendant had Firdavs's phone in his
19 hand and he had seen the text message that Jasur had sent
20 Firdavs the night before telling Firdavs not to come home.

21 Jasur described what happened next during his
22 testimony at page 839. "Then Akmal showed me the phone, the
23 SMS that I had sent, and he was screaming at me. He cursed me
24 out, asked me why. And I told him, 'I did it for your own
25 good. You should actually thank me.' And then he looked at

1 Suhkrob and said 'Take that out.' Suhkrob got out of the car
2 and from the trunk got some kind of bag and said 'Sit back.'
3 Then he gave it to Akmal. Akmal opened it and took a gun from
4 outside. The bullets all fell to the floor of the car. Then
5 he gathered the bullets, I don't know where he put them, said,
6 'Now you guys going to pay double and I'm going to fucking
7 kill you.' He said, 'Now you're going to pay for it.' And
8 then I agreed. I said, 'Okay. Sure. Sure.' Then after
9 that, he calmed down. And I told him, 'Me and Fedya together
10 will pay you your money back.'" Then he agreed.

11 Firuz's memory was less clear, but he also
12 remembered the bullets falling to the floor of the car and he
13 remembered the defendant threatening to shoot Jasur with the
14 gun. They both described the defendant as angry.

15 Firdavs, at page -- I'm sorry, Firuz, at page 384 of
16 the trial transcript, and Jasur at page 963. Both witnesses
17 described the gun as a black semiautomatic pistol, about 6 to
18 8 inches long. And their description of the gun they saw that
19 night in the defendant's white Camry fits the description of
20 the gun in evidence as Government Exhibit 330, the gun that
21 had the defendant's DNA on it. Seeing this gun in a dark car
22 at night, it would look like a black gun. Both Firuz and
23 Jasur also testified that after everything calmed down, Jasur
24 took the opportunity to examine the gun for himself. He had
25 never seen a gun before, much less held one in his hands.

1 Jasur said that the whole incident at Walgreens
2 lasted only 15 to 20 minutes, max. That's about how much time
3 he estimated he had spent sitting inside that white Camry that
4 night, and his estimate was quite accurate. We know that from
5 looking at Government Exhibits 515-A and 515-B and analyzing
6 those because by 9:27 p.m., Jasur was again trying to reach
7 Firdavs over Facebook Messenger. And in the window of time
8 between when Firdavs walked back into his building at 8:55
9 p.m., after he ran into Firuz unexpectedly, and this missed
10 Facebook Messenger call from Jasur at 9:27, the defendant had
11 brandished the gun and threatened to take Jasur's life just to
12 get more money. Firdavs got Jasur's Facebook message and
13 agreed to meet him.

14 Exhibit 28 is also in evidence, and that was a video
15 clip from Firdavs' building that you watched on the very first
16 day of the trial. That clip showed Firdavs coming out of his
17 building at around 9:29 p.m. and he waited for Jasur for
18 nearly ten minutes by the front of his building and then he
19 finally gave up and went back upstairs. And when he got back
20 upstairs, Firdavs went back to his computer and sent another
21 Facebook message at 9:41 to find out where Jasur was. That
22 gap between 9:27 p.m. and 9:41 p.m. was the time that Firdavs
23 had spent looking for Firuz -- I'm sorry, looking for Jasur
24 and waiting for Jasur to arrive at the apartment building from
25 the Walgreens. Within a minute or so, Jasur was back at

1 Firdavs' building, sending another message to Firdavs to come
2 outside.

3 Exhibit 29 shows the two friends trying to find one
4 another as they go in and out of the different doors of the
5 building. As you watch this video, you'll notice that neither
6 Jasur nor Firdavs has the key fob needed to get into the
7 building. The only way they can ever get inside the building
8 is whenever someone lets them in. And this is Firdavs looking
9 to prop the door open because he doesn't have that key fob.
10 And you can see how they greet one another, friends relieved
11 to finally connect, to tell each other what had happened, one
12 having been kidnapped earlier in the day and the other one
13 having just had his life threatened with a gun, both at the
14 hands of the defendant and his coconspirators. They talked
15 for a bit. And after a while you see Jasur got on his cell
16 phone. That was his conversation with the defendant, planning
17 to meet the defendant so that they could get Firdavs's phone
18 back. And after that call, the two of them go off to go meet
19 with the defendant to get Firdavs' cell phone.

20 In Government Exhibit 30, we see Firdavs returning
21 to the building, only now it's 10:19 p.m., and Firdavs has his
22 cell phone in his hand. We learned from both Firuz and Jasur
23 that the defendant had finally agreed to give Firdavs his
24 phone back; after all, Firdavs and Jasur had, by this point,
25 promised to pay \$5,000 to the defendant. And the defendant

1 made sure that Firdavs deleted all the data in his phone so
2 that he would no longer have any evidence of the cheating
3 scheme that they had participated in together. That's what
4 Firuz testified to at page 381 of the trial transcript. The
5 defendant made sure that Firdavs deleted all of the data
6 before returning the phone to Firdavs.

7 Now, even though the defendant made sure to delete
8 the data from Firdavs's phone, he didn't think to delete the
9 data on his own phones, the phones that were in his apartment.
10 Because we can see Government Exhibit 608-R, this was the
11 summary chart, and the bottom portion of this chart, these
12 rows in orange represent three different cell phones that were
13 recovered from the defendant's apartment. FBI's CART team was
14 able to obtain data from each of these cell phones, and all of
15 those phone numbers circled in red are phone numbers that the
16 defendant used at one time or another, including this
17 particular cell phone number ending in -0909.

18 If we look at the data extracted from these cell
19 phones, we can learn a lot about what happened on March 28,
20 2019. Government Exhibit 309.1 shows the Viber calls between
21 Firuz and one of the defendant's phones, Government Exhibit
22 309 or FBI Item 1-B-36. The Viber calls that are shown in
23 Exhibit 309.1 between Firuz and the defendant's phone
24 correspond to everything you know about what happened on March
25 28th. First, there is a call from the defendant to Firuz at

1 12:47 a.m. That call corresponds to what Firuz told us at
2 pages 349 to 350 of the trial transcript. Firuz told us that
3 it was at night when the defendant called him and told Firuz
4 to meet him at a specific address on East 12th Street. After
5 Firuz got that call, he went to Firdavs' building and joined
6 Jasur, Sukhrob and the defendant inside Jasur's Sienna. Now,
7 this call log in Exhibit 309.1 shows that the duration of that
8 Viber call was zero seconds, but we can confirm that Firuz and
9 the defendant actually ended up speaking to one another at
10 that time by looking at Government Exhibit 255.2.

11 255.2 is the T-Mobile records for the phone number
12 of Firuz Juraev, the phone number he used before he lost his
13 phone and before he got arrested. These records show that
14 among the calls associated with Firuz's phone number, there
15 was a call that lasted 977 seconds between Firuz's phone
16 number and that specific phone number ending in -0909. Now,
17 the record shows that the call happened at 4:47 a.m. on March
18 28th, but since we know from the record these are in UTC time,
19 you have to subtract four hours to convert it to Eastern
20 Standard Time. And remember that that phone number ending in
21 -0909 is the same phone number listed in Government Exhibit
22 608-R that was assigned to the SIM card in one of the
23 defendant's phones found in the defendant's apartment. That
24 was the phone called Government Exhibit 310, FBI Item 1-B-38.
25 In other words, this 977-second call was made at 12:47 a.m.

1 from Firuz to the defendant and it was the call during which
2 the defendant told Firuz to come meet him at Firdavs'
3 building.

4 So we can go back now to Exhibit 309.1 and you'll
5 see a series of Viber calls between Firuz and one of the
6 defendant's phones between 6:46 a.m. and 6:49 a.m. These
7 calls correspond to what Firuz testified to at pages 355 to
8 360 of the trial transcript. That's when the defendant asked
9 Firuz to come back with him to Firdavs' building in the
10 morning, between 6 and 7 in the morning.

11 Next, there was a series of calls between 9:40 and
12 9:50 a.m. That's about two hours after the kidnapping. And
13 the timing of these calls correspond to what Firuz told us
14 about the defendant calling Firuz a few hours after he
15 borrowed Firuz's car and he came back to Firuz's apartment and
16 told Firuz to come back -- come downstairs. Firuz told us
17 this during his testimony at pages 363 to 366 of the trial
18 transcript. Firuz got that call from the defendant, telling
19 him to come outside. And when Firuz got outside, that's when
20 he saw Firdavs trapped in the back seat of his own gray Toyota
21 Camry, sandwiched in between the defendant and Suhkrob.

22 Next, there's a series of calls between Firuz and
23 the defendant between 3:55 p.m. and 4:14 p.m. These calls
24 tell us that the defendant and Firuz were no longer together.
25 They had already released Firdavs and Firuz had already

1 separated from the defendant and Suhkrob. He described that
2 at page 376 of the transcript.

3 Finally, there is a 17-second call at 8:03 p.m., and
4 that call corresponds to what Firuz testified to at page 377
5 of the trial transcript. That's when the defendant told Firuz
6 that he wanted Firuz to get Firdavs so that the defendant
7 could talk to Firdavs. The timing of this call fits the
8 timeline of events, since we know from the video we just
9 watched, Government Exhibit 25, that at 8:45 p.m. Firuz and
10 Firdavs accidentally ran into each other at the front service
11 entrance of the building.

12 These data extractions from these cell phones, these
13 phone records, they're not terribly interesting, but they lay
14 out the black-and-white timeline of events, and that timeline
15 of events coincides with everything that the witness told you
16 about what happened on March 28th, 2019, and that's just one
17 of the reasons why you know you can rely on the witness's
18 testimony about what happened in this case.

19 Now, we can fast-forward to a week later, April 7,
20 2019. By that time, Firdavs had managed to put together
21 \$1,000 that he could use to pay the defendant. This would
22 make up for the bounced check that Firuz had tried to cash and
23 deposit into his own Chase bank account the day after the
24 kidnapping. Firdavs called up Jasur, and the two men reached
25 out to the defendant to let him know that they were ready to

1 make an installment. The defendant readily accepted and he
2 told them to come meet him at his building on Avenue O. When
3 they got there, instead of seeing the defendant, it was the
4 defendant's mom who walked out of the building, and the
5 defendant's mom collected and counted the money. Jasur and
6 Firdavs made sure to call the defendant to confirm that the
7 payment had been made so that there would be no future
8 problems. Once again, the defendant made his mom do his dirty
9 work.

10 For the defendant's conduct beginning on March 28th,
11 he is guilty of several other crimes. First is kidnapping and
12 conspiracy to commit kidnapping. The video proves that the
13 defendant carried Firdavs away against his will and that the
14 defendant did that knowingly and willfully. The evidence also
15 shows that the defendant abducted Firdavs so that Firdavs
16 would pay him the money. That's clear from the testimony of
17 the witnesses who knew the defendant and from the debt
18 acknowledgment letter that the defendant coerced Firdavs into
19 signing. The defendant also used a facility or
20 instrumentality of interstate commerce to commit the
21 kidnapping. The Judge will instruct you on what that
22 specifically means, but I expect the instruction to include
23 that using a telephone in furtherance of an offense is
24 sufficient to satisfy this element. Here, there is evidence
25 establishing that the defendant called Firuz and texted Firuz

1 in furtherance of the kidnapping to discuss what property they
2 should keep and take from Firdavs and to have Firuz help
3 transport Firdavs while the defendant and Sukhrob made sure
4 Firdavs didn't escape. The defendant is guilty of conspiracy
5 to kidnap because he knowingly and willfully entered into an
6 agreement with another person to commit the kidnapping and
7 because a member of the conspiracy committed an overt act in
8 furtherance of the conspiracy. The video alone proves that
9 the defendant conspired with both Sukhrob and Sherzod. All
10 three men agreed to participate in the kidnapping and all
11 three men took actual steps, overt acts, to accomplish that
12 goal. They brought a Taser. They chased Firdavs. They used
13 the Taser. They dragged Firdavs against his will into Firuz's
14 car. The defendant forced Firdavs to open a small business
15 account. All of those steps are overt acts in furtherance of
16 the conspiracy.

17 In addition to the kidnapping charges, the defendant
18 is also guilty of extortion and extortion conspiracy. The
19 defendant is guilty of those crimes because he wrongfully got
20 money from Firdavs. It doesn't matter if Firdavs owed money
21 to the defendant; Firdavs only gave that \$1,000 to the
22 defendant through his mom because he had been Tased, kidnapped
23 and threatened by the defendant and his abductors. The
24 defendant's actions also had an effect on interstate commerce.
25 Again, the Judge will give you the full definition, but it's

1 sufficient if you believe that Firdavs would have spent the
2 money that the defendant extorted from him on goods that
3 traveled in interstate or foreign commerce. You may have been
4 wondering why it mattered that Firdavs shops at H&M or CVS or
5 that he liked to eat at McDonald's, but those transactions are
6 proof that Firdavs would have spent his money and made
7 purchases affecting interstate commerce if he had gotten to
8 keep that money instead of paying the defendant. And you also
9 saw that he spent money in California. He had driver's
10 licenses from California and New Jersey. Firdavs is someone
11 whose purchases affected interstate commerce.

12 With regard to Jasur, the defendant committed a
13 whole separate crime against him. The defendant is guilty of
14 threatening physical violence to Jasur in order to obtain
15 money from Firdavs. That's Count Six of the indictment.
16 Based on the testimony of both Jasur and Firuz, we know that
17 the defendant threatened physical harm to Jasur. In fact,
18 both testified that the defendant threatened to shoot Jasur
19 and that the reason the defendant threatened to shoot Jasur
20 was because he wanted Firdavs to pay him money. By
21 threatening Jasur, the defendant furthered his plan to get
22 money from Firdavs.

23 Next, the defendant is guilty of the crime of using
24 a firearm during a crime of violence because when he
25 threatened physical harm to Jasur, he did so with a firearm.

1 He held it, he waved it around, all while yelling and
2 threatening Jasur. If you believe that the defendant
3 brandished the firearm for the purpose of committing the crime
4 charged in Count Six, the one we just talked about, then it
5 doesn't matter if you believe that the defendant also handed
6 the gun to Jasur later on because the defendant already
7 finished committing the crime when he used the gun to threaten
8 Jasur.

9 Now, despite all of the defendant's efforts to
10 extort \$5,000 from Firdavs and Jasur, he never received more
11 than \$1,000 on that one night that he sent his mom to go
12 collect his money. Jasur and Firdavs never had to make any
13 other payment to the defendant because on April 18th, the FBI
14 arrested him. Thankfully, no one was hurt, but there was no
15 doubt a bone chilling moment when FBI Special Agents Michael
16 Buscemi and Kristen Schill heard the sound of a gun being
17 racked from inside the defendant's apartment. The FBI had to
18 call for reinforcements from the NYPD's Emergency Services
19 Unit, ESU, a unit made from law enforcement officers who are
20 trained and equipped to handle a situation where a suspect is
21 believed to be armed and barricaded inside an apartment into
22 which they can't even see. With ESU's help, they were able to
23 breach the door. The defendant was unarmed. After a small
24 scuffle, the defendant was placed in handcuffs and taken out
25 of the apartment.

1 And then the FBI waited. They waited for a search
2 warrant signed by a judge to search the apartment for the gun
3 that they knew had to be inside there somewhere. They waited
4 for a warrant to authorize them to search for evidence of the
5 cheating scheme and the kidnapping and the extortion. And the
6 FBI found everything they were looking for.

7 They found ammunition, including a bag with loose
8 bullets just like the loose bullets Jasur and Firuz remembered
9 seeing inside the defendant's white Camry at the Walgreens
10 parking lot. That's page 35 of Government Exhibit 302-A.
11 They found a small black semiautomatic pistol. It has an
12 abstract blueish design and it's about the same size as the
13 gun that both Firuz and Jasur described, the gun that's shown
14 on page 3 of Government Exhibit 302-B, and the actual physical
15 gun in evidence as Government Exhibit 330.

16 They found countless earpieces, neck wires, cell
17 phones, all equipment that the defendant, Firuz, Sherzod,
18 Sukhrob and Jasur had used to help people cheat. They found
19 CDL study guides, they found DMV license applications, TLC
20 practice tests. They found temporary permits issued in the
21 names of other people. They found ledgers written in Tajic.
22 They found more than \$293,000 in cash stashed throughout the
23 apartment in closets and in the back bedroom where the
24 defendant's stuff was. They found dozens of identification
25 cards issued in other people's names, permanent resident cards

1 sometimes called green cards. They found passports, Uzbek
2 driver's license's, driver's licenses from New York and other
3 states around the country.

4 They also found evidence of the kidnapping and
5 extortion. They found Firdavs's wallet, the wallet shown
6 right here in Government Exhibit 333. It still had the
7 temporary debit card issued by Bank of America on the same
8 morning as the kidnapping when the defendant forced Firdavs to
9 open that small business checking account. The wallet that
10 they found still had the green card that the defendant told
11 Firuz he had taken.

12 Do you remember the Viber chat between the defendant
13 and Firuz? That's the text chat that they had. That chat is
14 contained in Exhibit 514-A in Tajic. The translation of an
15 excerpt of that chat is in Exhibit 514-B and you can see part
16 of it here. In that chat, you can see Firuz sends a message
17 to the defendant at 9:09 a.m., two hours after the kidnapping,
18 approximately. And he says, "Take his cell phone and do not
19 give it back." The defendant responds, "Of course. We will
20 not give his green card." And Firuz responds with a thumbs-up
21 Emoji.

22 What else did the FBI find inside the defendant's
23 apartment? They found a very distinctive plaid jacket hanging
24 in one of the defendant's closets, the very same jacket that
25 the defendant wore on the morning he committed the kidnapping

1 with Sukhrob and Sherzod, the same jacket he wore walking into
2 the Bank of America to extort money from Firdavs.

3 Now, you would think most people, after being
4 arrested by the FBI and after learning that all of their
5 criminal proceeds and the evidence of their crimes had been
6 seized from their apartment, would stop committing crime, but
7 not the defendant. Even from the confines of the federal
8 detention center in Brooklyn, he was still orchestrating
9 criminal activity with coconspirators, only now he was no
10 longer focused on cheating and making money, he was focused on
11 keeping people, who knew what he had done, from ever
12 testifying against him.

13 First he started with Firdavs, the victim of the
14 kidnapping. He incorrectly believed, as his former cellmate
15 Andrew Barrett told you, that without a victim, there would be
16 no crime. He falsely thought he would be able to prevent
17 people from testifying against him. He would be able to beat
18 the charges, he thought, by bribing Firdavs and getting
19 Firdavs out of the United States. Somehow, with the help of
20 his brother in Uzbekistan, the defendant managed to convince
21 Firdavs to go, leave the country, fly to Uzbekistan by
22 promising to pay him money.

23
24 (Continued on the following page.)
25

1 (Continuing.)

2 MS. NGUYEN: We don't know all the details of that
3 payment or the plan, but there is no doubt that there was a
4 plan, an agreement between at least two people, to pay off
5 Firdavs. This was proven from the testimony of both Andrew
6 Barrett and the Defendant's first lawyer, Mitchell Golub.

7 The Defendant wanted to let Mr. Golub know that the
8 victim would not be appearing to testify at the trial that was
9 scheduled to start in December of 2019. The Defendant had a
10 third party call Mr. Golub and tell him that financial
11 arrangements had been made and that the victim would not be
12 testifying.

13 Mr. Golub testified at Pages 746 and 758 about how
14 he reacted to receiving that phone call: He did the only
15 thing he could do. He advised the caller that what the caller
16 described was witness tampering and obstruction of justice.
17 And then he told the judge about what had happened.

18 Now, there's no doubt that the Defendant was behind
19 it all, behind the plan to pay off Firdavs, because he talked
20 about it in his jail calls with his brother.

21 Let's look at Exhibit 511B. This is part of a
22 translation of a telephone call between the Defendant and his
23 brother in Uzbekistan.

24 The Defendant says: Could you call your friend
25 Zufar right now? It is a task that can be done over the

Summation - Nguyen

1350

1 phone. In short, you have to contact mine. My boss needs to
2 be contacted. Like, a back-to-back call needs to be made, if
3 possible. If he doesn't pick up, then try every 30 minutes,
4 one hour. Maybe try to call him from a different number,
5 maybe he will pick up.

6 Later in that same telephone call in Exhibit 511B,
7 at Page 24, the Defendant says again: Starting from 8, do it.
8 8 to 8:30; latest, 9. Call at 8 too. If he does not pick up,
9 then call again two times. Hey, you know his second one,
10 right? 566-2242. It begins with 212. 566-2242, his mobile.

11 The Defendant gave his brother his lawyer's phone
12 number. That's how you know it was the Defendant's plan. And
13 the Verizon phone records that are in evidence as
14 Government Exhibit 258, that exhibit shows all of the phone
15 calls that Mitchell Golub received to his phone number. And
16 there was one specific phone number calling Mr. Golub again
17 and again and again, just like the Defendant had instructed.

18 There was the long distance phone call from that
19 phone number with the Uzbekistan country code too. All of
20 those calls were attempts on behalf of the Defendant to reach
21 Mr. Golub and let him know that the victim had been paid off
22 and wasn't coming to the trial.

23 In another recorded jail call between the Defendant
24 and his brother, you can hear them discuss Mr. Golub's
25 reaction to the phone call, the phone call he finally received

1 explaining the arrangement involving the victim.

2 The English translation of that call is in Exhibit
3 512B and an excerpt of it is on Pages 3 to 4. You can read
4 for yourself what they had to say about Mr. Golub's reaction.
5 You can tell they speak in vague, coded terms because they
6 know their phone calls are recorded. But this phone call
7 corroborates everything that Mitchell Golub told you, right?

8 Mitchell Golub told you he was upset and frustrated
9 by receiving the call. And in the call, they're talking about
10 how this is bad, this ruined his mood. He was like, "Why are
11 you saying this? You shouldn't have told me these things."
12 That was then the brother reporting to the Defendant what
13 Mitchell Golub had said.

14 The recorded jail calls, the testimony of Andrew
15 Barrett, the testimony of Mitchell Golub, the Verizon phone
16 records, together, all of that evidence shows that it was the
17 Defendant who was the one who masterminded the plan to bribe
18 Firdavs. And for a short time, it looked like the Defendant's
19 plan may have worked.

20 Firdavs was off in Uzbekistan. We know that from
21 Government Exhibit 241 because on September 5, Firdavs bought
22 a ticket to fly out three days later, on September 8. And we
23 know that Firdaz left on September 8 because the records tell
24 us and because Jasur and their friends saw Firdavs off at the
25 JFK Airport on his way to Tashkent.

Summation - Nguyen

1352

1 But the FBI hadn't given up. They were persistent.
2 They were still investigating. Now they were knocking on
3 Jasur's door. And Jasur knew just as much as Firdavs knew.
4 Once again, the Defendant needed to make another witness
5 unavailable. This time, he needed to get to Jasur.

6 That's when the Defendant enlisted Firuz, Murod, and
7 his brother to convince Jasur to leave the country, just like
8 Firdavs had. They convinced Jasur to ignore another lawyer's
9 good advice. Albert Dayan, he is the one who told Murod and
10 Jasur, in Russian and in English, in no uncertain terms, that
11 their plan to have Jasur leave the country was a bad idea,
12 their plan was nothing more than a crime called "obstruction
13 of justice."

14 Jasur himself was a bit reluctant about the plan at
15 first. But when Gayrat, the Defendant's brother, named the
16 right price, Jasur was ready to say good-bye to America. He
17 was going to be paid \$10,000 every six weeks for as long as it
18 took until the Defendant's case was over. We know that this
19 was the arrangement based on Jasur's testimony at Page 861 of
20 the transcript.

21 Jasur accepted the deal and he collected his first,
22 what turned out to be his only, \$10,000 payment. Flush with
23 cash, he went on a shopping spree, just like Firdavs had done.
24 He bought some clothes and he bought a plane ticket.

25 We know from his testimony and from

1 Government Exhibit 242 that on October 11, Jasur Kamolov
2 bought the earliest available ticket to Tashkent, Uzbekistan,
3 and prepared for his flight to depart two days later, on
4 October 13. But this time, the FBI was one step ahead, and
5 they arrested Jasur at the airport on October 13, before he
6 could leave the jurisdiction of the United States.

7 All of the planning and the plotting to bribe and
8 persuade Firdavs and Jasur to leave the country so that they
9 would not be available to testify at the Defendant's trial,
10 that's evidence that the Defendant committed the crime of
11 conspiracy to commit witness tampering. The judge will give
12 you the full instruction as to that charge as well.

13 As you listen to those instructions, just remember
14 that the Defendant agreed with another person to bribe a
15 witness, to corruptly persuade that witness to withhold
16 testimony at his criminal trial. The evidence establishes
17 that the Defendant actually entered into an agreement with a
18 bunch of people -- with Murod, with Firuz, with his brother --
19 but you only have to find that he conspired with at least one
20 other person.

21 Despite the Defendant's extensive and expensive
22 efforts to tamper with witnesses, there were witnesses who
23 appeared at this trial and testified openly about their
24 involvement in crimes that they committed with the Defendant.
25 The Defendant had been given his right, with his lawyer, to

Summation - Nguyen

1354

1 confront each of those witnesses, as he did during this trial.

2 And now, the time has come for the Defendant to be
3 held accountable for his criminal conduct: Hold him
4 accountable for scamming the DMV and the TLC into issuing
5 licenses for people who didn't earn them; hold him accountable
6 for kidnapping and extorting Firdavs Giyasov; hold him
7 accountable for threatening Jasur Kamolov at gunpoint just to
8 collect a few thousand dollars; and hold him accountable for
9 his efforts to pervert the criminal justice system by bribing
10 witnesses who had relevant evidence about the crimes that he
11 had committed.

12 The evidence presented over the last two weeks has
13 established the Defendant's guilt as to each and every one of
14 the charged crimes beyond a reasonable doubt. That's why I
15 ask you, on behalf of the United States, to find the Defendant
16 guilty of each of the crimes charged in the indictment.

17 Thank you.

18 THE COURT: All right, ladies and gentlemen. Before
19 we hear from the defense -- we've been sitting a while --
20 let's take a morning break. We'll take just under 15 minutes.
21 Please remember not to talk about the case amongst yourselves
22 at all.

23 See you back in here at 12:20. Thank you.

24 (Jury exits; in open court.)

25 THE COURT: Okay. My current thinking is we'll come

Summation - Guadagnino

1355

1 back at 12:20, do defense and rebuttal, then break for lunch,
2 then charge after lunch.

3 MR. GUADAGNINO: Sounds good, Judge.

4 THE COURT: See you in a few minutes.

5 MS. NGUYEN: Thank you.

6 MR. GUADAGNINO: Thank you.

7 (Recess taken.)

8 THE COURT: All right. Let's have the jury, please.

9 (Jury enters.)

10 THE COURT: Everyone be seated.

11 Defendant's closing, Mr. Guadagnino.

12 MR. GUADAGNINO: Good afternoon, ladies and
13 gentlemen.

14 You've been sitting here in this courtroom for over
15 two weeks, and I want to remind you of something very
16 important that Judge Cogan told you when you were selected as
17 jurors in this case: When you walk out that door, we all
18 stand in this courtroom in honor of the majesty of the
19 important decision that you, as jurors, have sworn to
20 undertake; the importance of your decision and how it can
21 affect someone. And in this case, you're decision will have a
22 bearing on this human being, Akmal Narzikulov.

23 Now, probably the second most important duty you
24 will ever be called upon to serve as United States citizens,
25 other than probably getting shot at on a battlefield at a time

Summation - Guadagnino

1356

1 of war in service to your country, would be exactly what
2 you're doing today: To sit in the judgment of another fellow
3 human being.

4 Ladies and gentlemen, the way this works is that the
5 Government has an opportunity to address you first, which they
6 did; then I am addressing you now; and when I sit down, the
7 Government will have an opportunity to address you one more
8 time in terms of a rebuttal.

9 I want to remind you of your sworn duty as jurors to
10 be fair and impartial. I cannot address every single point
11 that the Government makes in this case. But as sworn jurors,
12 who have taken an oath to listen to the evidence very
13 carefully, to cull through all the information that you have
14 received in this case, to be fair and impartial, you have a
15 duty that if the Government, when I sit down, says something
16 to counter anything that I bring up in my summation, to search
17 the evidence that is before you and to reconcile anything the
18 Government says with respect to some type of semblance of the
19 Defendant having culpability, you think about evidence in the
20 case that is contrary to the Government's argument. As sworn
21 jurors, you have that duty.

22 If you find that there is evidence or lack of
23 evidence that the Government presented that is consistent with
24 the Defendant's innocence, you have a duty to follow that
25 evidence and you have a duty to have it benefit the Defendant,

Summation - Guadagnino

1357

1 which brings me to the next point.

2 The judge will give you the charges in this case.
3 At the end, when I sit down and when the Government is
4 finished, the judge will charge you on how you decide this
5 case, the law that you are to follow, the procedure in which
6 you are to follow the charges that are before you. But I want
7 you to pay attention to three very important charges:

8 Remember the presumption of innocence. That is a
9 very important charge. Recall that the Defendant has no
10 obligation to put on any evidence. The Government has the
11 obligation to prove every single element of all the charges
12 against the Defendant beyond a reasonable doubt. And the
13 Defendant, as he sits before you, is presumed innocent until
14 and if the Government moves that burden to show that he is, in
15 fact, guilty of all the charges and elements before you.

16 Recall as well that the Government again has the
17 burden of proof to satisfy you beyond a reasonable doubt that
18 the Defendant is, in fact, guilty of all of the charges that
19 they are bringing before you. And recall that he's being
20 charged in an indictment and an indictment is not evidence of
21 anything. It is a vehicle that the Government uses to present
22 charges to a defendant, but it has no bearing whatsoever and
23 is not of any evidentiary quality.

24 But the most important charges that I want you to
25 consider is reasonable doubt. The judge will charge you on

Summation - Guadagnino

1358

1 what is reasonable doubt. Listen carefully to that charge
2 because that is the test that you will apply to see if the
3 Government has met their burden of proof, if they have somehow
4 taken off the cloak of the presumption of innocence for Akmal,
5 if they have proven their case beyond a reasonable doubt.

6 The judge will tell you that a "reasonable doubt" is
7 a doubt that would cause a reasonable person to hesitate to
8 act in a manner of importance in their own personal life.
9 Let's bring that home: What is a reasonable doubt? What
10 would cause you to hesitate if you have a doubt about a
11 certain fact that would have some kind of import in your
12 personal life.

13 If you have an elderly parent that you need to take
14 care of or find someone to take care of that person when
15 you're not home, or if you have children and you need to find
16 yourself a babysitter to take care of those kids, you want to
17 make sure that you have no doubt as to the quality, as to the
18 sincerity, as to the safety, the information that you want to
19 know about the people that you are going to leave your loved
20 ones with. Or if, God forbid, one day you cannot take care of
21 your own affairs, who is going to take care of you? You would
22 hope that those people in charge of your welfare would decide
23 who that person would be.

24 And all the information, the quality of that
25 information about those people who are going to take this

Summation - Guadagnino

1359

1 charge, you have to look at that carefully before you make a
2 decision about who is going to watch you, your children, or
3 your financial affairs. And that is how you want to
4 scrutinize this evidence. That is the test that you want to
5 employ because that's how important it is to Akmal.

6 Ladies and gentlemen, I'm going to go through some
7 of the testimony in this case. And you are going to see by
8 illustration how you have every reason to doubt that the
9 Government has proven their case beyond a reasonable doubt.

10 First of all, ladies and gentlemen, all of this
11 information, the story that you're getting about all the
12 physical evidence that is before you, is coming from two
13 sources. Who are those sources? Firuz Juraev and Jasur
14 Kamolov.

15 You were here. You listened to their testimony.
16 You paid attention. Let's get to it.

17 Firuz Juraev, he testified he, himself, cheated on
18 his test. He went to Ohio, he used fake addresses in Ohio,
19 not with Akmal's help. One lie after the other.

20 He lied about how he met Akmal. He lied about
21 seeing Akmal only at birthdays and special occasions. He lied
22 about not knowing Firuz Juraev. He lied and told the FBI he
23 didn't know anything about a kidnapping, according to him. He
24 lied to the FBI about not knowing Firdavs. He lied about not
25 knowing where the \$1,000 payable to him came from. He lied

Summation - Guadagnino

1360

1 about not knowing Murodjon Sultanov.

2 Murodjon Sultanov, we'll get to him in a little bit.

3 He lied about how much money he owes Akmal. He said
4 to you he borrowed 5,000 and then another 5,000 and later on
5 he borrowed 5,000 and then 2,000. He said maybe the second
6 time he only borrowed somewhere between five and six hundred
7 dollars.

8 He lied to the FBI and he learned that Firdavs had
9 been beaten up by looking in Google. This is Firuz Juraev.
10 Firdavs, the guy who got kidnapped, the one that all this fuss
11 is about, him getting kidnapped, Firuz tells you that he
12 learned about him getting beaten up in Google. He lied that
13 Sukhrob said Firdavs was beaten. And he never told this to
14 the FBI.

15 He lied about the Walgreens incident. He told you
16 he was driving home from work and he saw Akmal's car. He
17 stopped to say hello and he got out of his car to go into
18 Akmal's car. Never told the FBI that Jasur took the gun from
19 Akmal and that Jasur put that gun in his own hand and said,
20 "Hey, what's this? Where did you get it?"

21 Let's talk about that for one second.

22 About 25 years ago, a famous judge in New York by
23 the name of Judge Judy wrote a book. And the title of the
24 book is Don't Pee on My Leg and Tell Me It's Raining.

25 Did you ever hear of such nonsense?

Summation - Guadagnino

1361

1 Someone is upset at you because you're not paying
2 them money. They present you with a gun with bullets.
3 They're upset and they say, "I'm going to kill you. I'm going
4 to fucking kill you." And then the person who that anger is
5 directed toward is able to take that gun and put it in their
6 hand like that, like nothing happened.

7 Did you ever hear of that?

8 If it doesn't make sense, it's because it's
9 ridiculous. Just because you were chosen as jurors doesn't
10 mean you left your common sense outside those doors. You have
11 common sense, each and every one of you. It's in your bones,
12 it's how you were raised. And you don't leave it outside the
13 door. Use it here.

14 That never happened and it doesn't make sense,
15 ladies and gentlemen.

16 They said Jasur -- Firuz said that he owes Akmal
17 about 4,000 and 2,000 that Akmal's father gave him. Akmal's
18 father gives him \$2,000 for Akmal to spend in the commissary.
19 Now, that \$2,000, Firuz testifies that he owed Akmal.

20 Well, if Akmal's dad gave Firuz \$2,000 to pay off
21 Jasur Kamolov, why would Firuz still owe that money to Akmal?
22 It doesn't make sense.

23 And by the way, a lot of these facts don't make
24 sense. And they're kind of difficult to get your hand around
25 or head around because there's a lot going on here between

Summation - Guadagnino

1362

1 Firuz Juraev and Jasur Kamolov, two people that very well know
2 each other, two people that have interacted, and you're
3 getting all of your information from these two people.

4 And this is the kind of evidence you're supposed to
5 decide this man's fate upon. Think about that. Think about
6 how scary that is. That is the task at hand.

7 Firuz tells you that he had an address in Ohio when
8 he cheated on tests in Ohio. He told the FBI that Akmal gave
9 him \$1,000 because Akmal owed him money, he helped Uber and
10 Lyft people cheat on the Taxi & Limousine Commission test, and
11 that Akmal was looking for guns in Firuz's phone. He said
12 that Akmal asked him to do it for him because he didn't have a
13 phone of his own.

14 Really? Akmal didn't have a phone of his own?

15 He said Akmal didn't have -- listen to this: Akmal
16 didn't have eBay or Amazon, so the only way Akmal could get
17 eBay or Amazon is through Firuz.

18 Really? You got to be kidding me. You got to think
19 about this and you got to think about this good and hard and
20 apply your common sense as to whether or not this makes any
21 sense to you.

22 You saw what we were talking about, that picture of
23 the different gun holsters. You had Agent Galicia testify she
24 saw pictures of all the different gun holsters. And this gun
25 that's in evidence, that gun has nothing to do with any of

Summation - Guadagnino

1363

1 those pictures that Firuz Juraev said he was looking for on
2 his phone. Nothing whatsoever.

3 But, see, the idea is and the theme of this whole
4 thing is, "Let's see how much evidence that we have that we
5 can throw out there, and we use Firuz and we use Jasur to
6 connect the dots. Those are the ones that are going to
7 connect the dots for us." And, basically, they're going to be
8 telling you whatever they want you to hear and whatever they
9 want you to think. And, again, that is a reason to doubt that
10 the evidence is credible and decent to make your decision
11 against Akmal.

12 This kidnapping that Firuz testified to. He said
13 Akmal sent him a text regarding Firdavs owing Akmal money, but
14 he never showed that text to the Government. He never showed
15 that to the Government.

16 He says he went to Firdavs' building late at night
17 just because Akmal told him to, but he did not know the reason
18 behind that.

19 Wait a minute. Akmal tells Firdavs, allegedly, to
20 go to a building -- withdrawn. Firuz goes to a building,
21 okay, based on Akmal telling him, "Go to this building to see
22 Firdavs."

23 Now, you saw -- I believe you saw the video of Firuz
24 trying to look for Firdavs in the building. And this is
25 supposedly the night of the kidnapping. You know from the

Summation - Guadagnino

1364

1 testimony that Firuz tried to extort money from Firdavs
2 because Firuz signed his name on the check for \$1,000, okay,
3 he wrote his name in, he wrote in \$1,000, and he tried to cash
4 that check.

5 That same night, Firdavs goes to the 63rd Precinct
6 to report to the police that he was kidnapped and Firuz, whose
7 one of these extortionists against the guy who's reporting the
8 kidnapping, shows up at his house to say hello.

9 Really? Is that how life works? Do you believe
10 that for one second? Does that sound credible to you?

11 Does that sound like it makes sense, a guy who just
12 tried to extort a thousand bucks from you shows up at your
13 house that night after you report the kidnapping to the
14 police?

15 Where's the police? If this guys shows up at the
16 63rd Precinct, Firdavs saying, "I got kidnapped," how come the
17 cops aren't there?

18 And then later on, you got Jasur Kamolov showing up.
19 The Government just showed you the video. He shows up to say
20 hello to his friend. And they're talking about the kidnapping
21 and they're getting together and saying, "Oh, my God, I just
22 had a gun put to me in the car. How are you doing? Are you
23 okay? Is everything all right? Hey, let's call Akmal, the
24 guy that kidnapped me today and see if we can get your phone
25 back."

Summation - Guadagnino

1365

1 Really? Why go to the police at the 63rd Precinct
2 and report that you were kidnapped and now you're playing
3 Detective Columbo on your own trying to get your phone back?

4 Does that make sense to you? Use your common sense.
5 Think about it. It doesn't make sense. Because what you got
6 here is you got these three guys getting together, and we're
7 going to get to that in a minute as to why.

8 He testifies, Firuz, he doesn't remember how he got
9 to that building. He testified that he did not meet them the
10 next morning because he had to go to work and his heart would
11 not let him.

12 The next morning, Akmal went to pick up Firuz's car.
13 Firuz allowed his car to be used even though Akmal had his own
14 car. Firuz knew what the car was for and his heart was okay
15 with that. He texted, Akmal, don't give him his phone; he was
16 okay with that.

17 When they came back to his house, Sherzod left and
18 Firuz got behind the wheel. He drove everyone -- Firuz drives
19 everybody to the Bank of America. He did not know what the
20 others were talking about in the backseat.

21 Firuz wrote his name on the check and he tried to
22 cash the check. He deposited it into his account, took a
23 thousand dollars from it, and gave it to Sukhrob because Akmal
24 told him to do it.

25 Everything you're hearing is adding on at the end of

Summation - Guadagnino

1366

1 the sentence "Akmal told me to do it," "Akmal told me to do
2 it." It's all Akmal. "I did this, but Akmal told me to do
3 it", right?

4 That's the decent credible evidence that you have to
5 use to decide Akmal's fate beyond a reasonable doubt.

6 Firuz was down a thousand dollars from his own
7 money. Firuz testified that he told Akmal the check had
8 bounced. Akmal told him to talk to Jasur. Firuz lied to the
9 FBI about never talking to Jasur about the check.

10 Now we're going to talk about the pharmacy incident,
11 the Walgreens incident. Firuz does not remember why he was
12 called to the Walgreens pharmacy. He does not remember the
13 time.

14 Firuz said Akmal yelled at Jasur for helping Firdavs
15 sending the text and Akmal pulled out a gun and the gun was
16 black. Everybody's theme is the gun was black because they
17 recovered a gun and that gun is the one that's supposed to be
18 the gun that was used to put into Jasur, right, the black gun.

19 But you have a picture of the gun and you also have
20 the gun in evidence. And if you look at that gun, it's very
21 unique. Now, the Government argues that at night, that gun
22 would look black. But if you look at that gun and you see the
23 design on the bottom part of that gun, it looks like a blue
24 snakeskin. It's a very distinctive gun. It's not black, it's
25 like a two-tone gun; blue snakeskin on the bottom and like a

Summation - Guadagnino

1367

1 black slide.

2 The gun is in evidence. The photograph of the gun
3 is in evidence. And you can take a look for yourself and you
4 can see. Because at the end of the day, when you go in to
5 deliberate in the jury room, you will have access to all the
6 evidence, and you can study it and look at it and make up your
7 own mind.

8 And Jasur, according to Firuz, said Jasur, who was
9 being threatened with the gun, Jasur took the gun from Akmal,
10 and Jasur said, "Oh, look, what is this? Where did you get
11 this from?"

12 There was testimony about bullets found in front of
13 Firuz, scattered in front around the middle area of the car.
14 Everybody -- listen to this: Everyone left very calmly from
15 this I'm-going-to-shoot-you incident. That's what Firuz tells
16 you. He doesn't remember if he left first or if Jasur left
17 first.

18 He acknowledged that he owes money to Akmal, about
19 four or five thousand dollars, yet Akmal never kidnapped
20 Firuz. Why is it that if Firuz owed money to Akmal and he
21 never paid Akmal, Akmal never kidnapped Firuz?

22 He only kidnapped certain people, but not everybody
23 who owes him money. Akmal calls Firuz "Usto Bobo," which, as
24 you learned, in Tajic means "grand master." What is that all
25 about, grand master?

Summation - Guadagnino

1368

1 Another day after the alleged kidnapping, Firuz took
2 Akmal to Firdavs' apartment. Firdavs came out. Firuz and
3 Firdavs shook hands like nothing happened. Firuz is the guy
4 that extorted or took money from Firdavs, the \$1,000.

5 Now, here's a guy who is trying to pull the wool
6 over your eyes because he's trying to help himself. This is
7 Firuz Juraev. Firuz Juraev pays Jasur Kamolov \$2,500 to leave
8 the United States. Jasur Kamolov says, "No, I want \$100,000."
9 So, Jasur is trying to get rich, trying to make something off
10 of this scheme.

11 And Firuz tells you when Jasur and Murodjon Sultanov
12 go to see the lawyer Albert Dayan, Firuz says he didn't want
13 to go to the attorney, he didn't want to get involved. But he
14 did get involved because he went and gave Jasur the money. He
15 said, "Here's 2,500 bucks. Get out." That's him being
16 involved.

17 Firuz pleads guilty to extortion conspiracy. He
18 faces up to 20 years in jail, and he's testifying to you in
19 court about this incident under those conditions. He's
20 looking at \$250,000 in fines, he's looking at getting
21 deported, losing his freedom and his family.

22 He pled guilty to witness tampering. He paid the
23 \$2,500 to Jasur; he can look at 20 years for that. \$250,000
24 in fines. Together with those two charges, he's looking at
25 about 40 years. And he comes into court and he tells you what

Summation - Guadagnino

1369

1 he tells you.

2 You have every reason to doubt the truthfulness of
3 what this man is telling you because he is on the hot seat.
4 And he's trying to claw his way out of this problem that he
5 put himself in by trying to dip that man in acid with all of
6 his lies that you know this man is capable of, Firuz Juraev.

7 He has the cooperation agreement. Everything he
8 said in terms of what he did wrong. He includes Akmal in
9 there. You heard that, based on his testimony, a judge could
10 do this: The judge could give Jasur -- could give Firuz no
11 jail. He's looking at 40 years; he could walk out with no
12 jail. You know what he's doing.

13 And he was involved. And he told you how he was
14 involved, in the scheme to commit the identification fraud, the
15 TLC licenses, and all the other things, the commercial
16 driver's license. And he didn't have to plead guilty to that.
17 He got a pass on that, get-out-of-jail-free card.

18 That's Firuz Juraev.

19 Now we're going to get to Jasur Kamolov. Akmal's
20 name was not mentioned in the tape with the lawyer. When
21 Jasur Kamolov went to meet Albert Dayan, you didn't hear on
22 the tape Akmal's name being mentioned.

23 Jasur wanted a hundred thousand to leave. He
24 listened to Murodjon, Murodjon Sultanov, and attempted to
25 leave. He admitted lying to the FBI about his involvement in

Summation - Guadagnino

1370

1 the cheating.

2 Firdavs also helped people cheat. So, Firdavs
3 helped people cheat, Jasur helped people cheat, and Firuz
4 Juraev. Those three, the ones that meet on the 28th, that are
5 saying Akmal did this, Akmal did this, all three of them are
6 in cahoots.

7 Murodjon got Jasur involved in the cheating because
8 Murodjon drove Jasur to Pennsylvania for Jasur to cheat on the
9 test. Murodjon knew the person in Pennsylvania and he had a
10 contact there to help Jasur out. Jasur didn't have to take
11 the test.

12 Jasur told the FBI the second time he borrowed money
13 from Akmal, he borrowed a thousand dollars. Then in court, he
14 said Akmal never gave him a thousand dollars. He said the
15 interpreter got it wrong.

16 When you're confronted with a lie, it's easy to say,
17 "The interpreter screwed up. I told the truth, but the
18 interpreter lied." The interpreters are sworn to make a
19 truthful interpretation. This is this guy's way of trying to
20 slime out of his lies.

21 He lied to the FBI about how he met Firdavs. He
22 admitted to that lie in court. He lied to the FBI about going
23 to the wedding. The night before the kidnap, Jasur testified
24 that Firuz -- listen to this: The night before the alleged
25 kidnap, Jasur testified that Firuz was in the car, but during

Summation - Guadagnino

1371

1 an interview with the FBI Jasur said waiting for Firdavs were
2 only Akmal, Sukhrob, and Jasur. So, only Jasur, Akmal, and
3 Sukhrob were in the car. But here, he tells you that you
4 Firuz was also in the car.

5 So if he lies in court or he lies to the FBI when
6 he's not allowed to do that, so how do you believe someone
7 like that? And how do you use that man's testimony under
8 these circumstances to make such an important decision beyond
9 a reasonable doubt in judgment of Akmal?

10 Jasur said Akmal and Sukhrob went to see Jasur, that
11 only two people were in the car with him. He never mentioned
12 Firuz was in the car. He reiterated Firuz was in the car.

13 Now, this incident in front of the Walgreens, Firuz
14 Juraev testifies under oath that he was there in the car when
15 Akmal put the gun out on Jasur, that he saw all of this.
16 That's what Firuz told you. Jasur tells you Firuz was never
17 there. Firuz was never there.

18 These two guys, they can't even get their stories
19 straight because they want to sell you a bill of goods. They
20 want to sell you this because they want to save themselves
21 from the crimes that they've committed and they want to throw
22 this man under the bus as a patsy for everything that they're
23 doing because he's an easy target.

24 Jasur never told the FBI that he took Akmal's gun.
25 You don't think that's an important -- you disarm the man

Summation - Guadagnino

1372

1 that's going to shoot you and kill you because you didn't pay
2 him money, you're able to take his gun away, and you fail to
3 mention it to the FBI, "By the way, I'm sorry I forgot to
4 mention, I disarmed that guy."

5 When it makes news, if somebody disarms someone in a
6 bank, they're going to commit a bank robbery, if somebody's
7 going to shoot this person and you were able to disarm him and
8 turn the gun around on them, "No, I forgot that. It wasn't
9 important." That's because it never happened. It's all a
10 lie.

11 Jasur tells the FBI that when he went to see Firdavs
12 that night, and you saw the video, Jasur is going to show up
13 there that night that Firdavs allegedly got kidnapped and
14 they're going to meet up and that they're shaking hands and
15 seeing if each other is okay and they're in the lobby and
16 they're supposed to see that each other was okay, Jasur told
17 the FBI that he went to see Firdavs that night and Firdavs was
18 badly beaten. That's the testimony, okay?

19 What is Jasur's definition of badly beaten? He has
20 a cracked tooth, he's weakly speaking, and weakly walking.

21 Now, you have eyes and you saw the video. Does
22 Firdavs Giyasov look like he's walking around the hallway
23 trying to meet up with Jasur, that he's weakly walking?

24 And if he was weakly speaking, why have a
25 conversation with Jasur to begin with?

Summation - Guadagnino

1373

1 And by the way, did you see any evidence about a
2 chipped tooth? At the precinct, they took a picture of this
3 guy wearing the shirt. Breaking news. Where is the picture
4 of the cracked tooth?

5 What kind of marks does this man who just got
6 kidnapped that was badly beaten on that same day, where's
7 marks?

8 Common sense. Use your common sense. Do not put
9 that to bed, you need that in this case.

10 On November 26, 2019, Jasur testified that he came
11 clean with the FBI and he told them everything that he lied
12 about so he could take a plea in January of 2020. So, a month
13 and a half before, he wants to have a Kumbaya moment. He
14 wants to be clean. "I tell you everything I lied about so
15 that when I go to court on January 2020, everything is good,
16 I'm a clean open book."

17 So, he admitted to them, he admitted to the FBI, to
18 the Government, to the U.S. Attorney's Office, that he
19 admitted to lying about not helping people cheat, he admitted
20 to lying about leaving the country to get married. All of
21 these lies he tells them while he's sworn to tell the truth,
22 but he's admitting now that he lied even though he was sworn
23 to tell the truth.

24 Jasur lied about not receiving money to leave the
25 United States. He lied about that. Jasur lied about not

Summation - Guadagnino

1374

1 treating when he got his commercial driver's license. He lied
2 about how Firdavs came into contact with Akmal.

3 And Jasur entered into the cooperation agreement
4 with the Government. He's trying to get a lower sentence.
5 He's trying to get the 5K letter. We talked to him about the
6 fact that in his agreement he can get an S visa.

7 Now, this guy's a legal permanent resident. He
8 pleads guilty, he can get deported, leave the United States.
9 He has family in this country. They send him back to
10 Uzbekistan, he'll never be able to set foot in this country
11 again, never be able to come back, and he didn't remember that
12 in his agreement the Government can apply on his behalf for an
13 S visa that would save him from being deported.

14 He was in front of Judge Glasser when he took his
15 plea and swore to tell the truth, the whole truth, and nothing
16 but the truth, and that he read the agreement with his lawyer,
17 he understood everything in the agreement. And here in open
18 court, under oath, he tells you, "I don't remember that. I
19 didn't go over that. We didn't go over the whole thing."

20 Common sense. That's common sense. That is another
21 reason why this guy is up here lying to you: He doesn't want
22 to get kicked out of this country. He wants his candy, he
23 wants his lollipop, and he'll tell you anything he's got to
24 tell you to get himself out of the problem that he put himself
25 in. And it's very easy to throw put Akmal under the bus to

Summation - Guadagnino

1375

1 get him what he wants.

2 On November 14, 2019, Jasur told the FBI that Akmal
3 smashed the driver's side of his car, that Akmal had
4 threatened him before because Jasur owed him money. Jasur did
5 not tell the FBI the smash was a lie when he came clean in
6 November, before he went to his January plea. He doesn't say
7 a word about that being a lie until one and a half years
8 later, a couple weeks before this case goes to trial. He lets
9 that impression stand for a whole year and a half.

10 And when I ask him about that lie and about him not
11 coming clean, again, what does he do? Blame the interpreter.
12 It's the interpreter's fault. The same interpreter he had
13 over and over again. He speaks Russian, he speaks Turkish, he
14 speaks Tajic, he speaks Uzbek. The Russian interpreter got it
15 wrong.

16

17 (Continued on the following page.)

18

19

20

21

22

23

24

25

Summation - Mr. Guadagnino

1376

1 MR. GUADAGNINO: Andrew Barrett, ladies and
2 gentlemen, Andrew Barrett came to testify. Mr. Barrett is a
3 degenerate, steal money person from the
4 United States Government. He cannot help himself, he admitted
5 That. He is a who stole millions of dollars from Medicaid and
6 Medicare.

7 While he was out on bail, while he was supposed to
8 behave himself, he entered into a fake contract to pretend
9 like he was selling one of his pharmacies to someone else.
10 While he was out on bail for stealing \$6 million from the
11 United States Government so he could try another angle to
12 continue stealing money. And Judge Kiyo Matsumoto discovered
13 his scheme and took away his bail and put him back into jail.
14 While he was in jail, two weeks before that, that's when he
15 got put in. Two weeks later, he pleads guilty.

16 So what happens? Judge Matsumoto sentences
17 Mr. Barrett to 43 months in jail. Mr. Barrett goes up to jail
18 he goes up to Orange County, up to federal prison in Orange
19 County, and they cut him a break. They release him early, not
20 like a release where he goes out into society, but to a
21 halfway house. The halfway house is in the Bronx, it's still
22 part of the United States Bureau of Prisons but you have more
23 liberties, you're able to come and go for 16 hours a day and
24 they gave him that special treatment. But what does he do
25 while he gets this special treatment?

Summation - Mr. Guadagnino

1377

1 While he gets that special treatment, about a month
2 or two later, his wife, who owns two pharmacies in
3 Long Island, goes and drives there to pick him up so that he
4 can go to the two pharmacies that she owns in the morning and
5 he can use a pharmacist's identification that works for them
6 to get on the computer and continue stealing from the
7 United States Government, Medicaid and Medicare.

8 The guy didn't even get released from jail and he
9 continues to do for himself what he wants and steal.
10 Mr. Schemer, Mr. Scammer, Mr. It's All Me, The Heck With
11 Everyone Else. He cannot help himself.

12 What happens next? He gets arrested and charged
13 with new healthcare fraud. And he tells you, and this is
14 something that's incredible. While he's at the Metropolitan
15 Detention Center in Brooklyn, he chooses to become cellmates
16 with Akmal. I chose him, like you got a choice in the matter.
17 The jail they're going to let you choose who you want to be
18 associated with. Does that make sense? And that he was in
19 the jail cell with Akmal June, July, August, September,
20 October, November, about five, six months.

21 During that timeframe, he tells you that Akmal is
22 having confession with him every day. He's going to
23 confession with Mr. Barrett. Akmal tells him everything: I
24 kidnapped this person; I was doing cheating at the Taxi and
25 Limousine Commission; I tried to see if there was a way that I

Summation - Mr. Guadagnino

1378

1 could pay somebody off so that they don't come to testify at
2 my trial.

3 Well, you heard from Mr. Fields. Mr. Fields was a
4 representative from the Metropolitan Detention Center that
5 when people are in their cells, one of the things that every
6 inmate has is your legal paperwork. You got charges against
7 you, you got all the papers your lawyer gives you. And
8 sometimes you leave the cell and it's very easy for another
9 person to see what it is that you're charged with.

10 Now, he says, oh, Akmal showed me the video and he
11 showed me -- that's him, look, I recognize that guy as being
12 Akmal in the video and he showed it to everybody else in the
13 jail that we were with; yet, Mr. Barrett is the only one who
14 is taking advantage of that good stuff, right. Mr. Barrett
15 comes in here and he's the one that's testifying and you know
16 why? Because, unfortunately for Mr. Barrett, when he went to
17 court, when he got indicted, he had to go to court and the
18 judge that he had to get was the same Judge who knew his
19 schemes, Judge Kiyo Matsumoto. That's when he found out in
20 October of 2019, oh, my God, Judge Matsumoto she sent me to
21 jail for 43 months, she's the one that took away my bail
22 because I kept cheating the federal government. Now, I am in
23 bigger trouble because I got the same judge that I did all
24 those things and now I got to figure out how to get myself out
25 of this trap.

Summation - Mr. Guadagnino

1379

1 So lo and behold, seven days after that, is when he
2 reaches out to the Government to say, I got some information,
3 I got the goods on a guy that's bunking with me. I want to
4 tell you everything about what he told me, and you're going to
5 love it because you're going to use it against him. And I'm
6 going to come to court and I'm going to be your witness and
7 I'm going to testify to testify he told me he did.

8 That's what Barrett does. He's a schemer and he
9 can't help himself. And this time he really screwed up
10 because he got his ex-wife involved in the scheme. Because he
11 couldn't help himself and he had her drive him from that
12 halfway house to the pharmacies, she became an accomplice to
13 his stealing and now she's in trouble as well. And he has
14 three girls with her. He has one daughter who came and always
15 helped him out with bail she's a doctor. She must be very
16 embarrassed to have him as her father but you can't choose
17 your parents.

18 In any event, he has to figure out a way to save
19 himself and his family. Throw Akmal under the bus, it's
20 really easy. And something very easy is, Mr. Golub, Akmal's
21 prior attorney came in and he testified. When he told you
22 that he got a phone call but he couldn't tell you whether the
23 person calling him on the phone had an accent or not. And
24 that was something that he probably would have remembered.
25 And it's funny how Barrett testified here in open court that

Summation - Mr. Guadagnino

1380

1 when he testified to Akmal he said, oh, Akmal, oh, you got
2 this great plan to get rid of the witnesses, right? And
3 that's something you should really tell your lawyer.

4 Well, Mr. Barrett brought that to light, didn't he?
5 Mr. Barrett has minutes from the jail. And Mr. Barrett can
6 make phone calls and he has contacts and he has people that
7 can make phone calls. What did Mr. Barrett do? Isn't it how
8 Mr. Barrett can come in here and take that information and
9 twist it to his own benefit. That's the kind of evidence that
10 you have to use to decide beyond a reasonable doubt. Credible
11 evidence as to whether or not Akmal did the things that
12 they're saying that he did.

13 And you heard Mr. Fields who was a representative
14 from the Metropolitan Detention Center who was the
15 investigator who testified this guy, if he was buying minutes,
16 he never got in trouble for it. He never got sanctioned. He
17 never got any tickets, any kind of demerits, any kind of
18 penalties for doing that. Has no record of that. He's the
19 same guy that told you that Barrett and Akmal were together
20 for six months, but he had no record of this guy getting in
21 trouble for having bought minutes from anyone.

22 Look, the whole story behind what happened here is
23 being provided to you by these three people that you have to
24 completely and totally and morally disregard. Totally.

25 Other than the testimony from the three people that

Summation - Mr. Guadagnino

1381

1 you have to totally disregard because they're complete liars,
2 the Government failed to prove that Akmal helped Jasur or
3 Firuz with any CDL licenses from all the identifications that
4 were recovered in the apartment. None of those people
5 testified. The identifications could have been for money lent
6 by the money or the dad or by any person not necessarily
7 related to Akmal.

8 Other people had access to the apartment. You know,
9 the mother had money there she was lending money. You saw in
10 the evidence that there was money that was wrapped in paper
11 towels, that had low interest rates object them. The
12 identifications were collateral for the money that was lent.
13 And it is a fact, this is Brooklyn, New York, a lot of
14 immigrant communities when people come other over and they're
15 not established and they don't have credit and they don't have
16 any maybe legal means by which they can borrow money for
17 things that they need, people in the community lend each other
18 money. You go to a Su-su or you go somewhere where you can go
19 get a loan and that's pretty much what is happening here.

20 A lot of the identifications that were found in that
21 apartment were of women. And typically, and not that women
22 can do anything as well as men, but typically, you don't see
23 many women driving Taxi and Limousine Commission cars, and you
24 don't see a lot of women becoming truck drivers. It's just
25 not something that women really are into. The journals that

Summation - Mr. Guadagnino

1382

1 they introduced into evidence, you saw handwriting, you didn't
2 see anyone come in here and analyze the handwriting against
3 his handwriting and say that was his handwriting. There were
4 no T-shirts with holes found in the apartment. You have this
5 book that belonged to Murodjon Sultanov that was found in the
6 apartment. Kevin Jolly, the director of PSI, came in to tell
7 you about the cheating that was going on. There was no
8 evidence of Narzikulov's payments to the Taxi and Limousine
9 Commission.

10 But, and I say this, there were multiple payments
11 for many clients, approximately, 50 from November 2018 to
12 December 2019 made by Murodjon Sultanov and he used his credit
13 card. Sultanov finishing in 2828. Murodjon Sultanov made
14 those payments. Then you had Saleema Jones come in, she was
15 another test administrator. There were two videos of people
16 that were cheating that were shown and none of those cheaters
17 were connected to Akmal Narzikulov. There was no evidence of
18 that whatsoever.

19 Another proctor came in, John Alameda. He caught
20 Rustam Pulotov cheating and he heard a buzzing noisy emitted
21 from the candidate. No proof whatsoever that Akmal Narzikulov
22 sent that man in there or got paid for him cheating.

23 So you had also Special Agent Galicia who came in to
24 testify that she came in and assisted with the surveillance of
25 Giyasov and Jasur when they were going to pay a thousand

Summation - Mr. Guadagnino

1383

1 dollars to Akmal. You remember about seven or eight days
2 after the kidnapping maybe nine days, Special Agent Galicia
3 was in a car, she was taking photographs. Jasur Kamolov and
4 Firdavs Giyasov were in this car in the front seat and
5 allegedly there was going to be a payment made to Akmal
6 Narzikulov in the amount of \$1,000, it was already
7 prearranged.

8 When the time came for the payment, no picture of
9 Akmal Narzikulov picking up the money. Kamolov testified that
10 the mother came down to pick up the money, but we don't have a
11 picture of the money because the car was in the way I think
12 that's the testimony. It's unbelievable, isn't it? These
13 guys open their mouths and tell a story and you're supposed to
14 believe every single thing they say hook, line, and sinker so
15 that they can save themselves. Tell you a story for their
16 benefit. They come into court and they're supposed to be
17 truthful and they're supposed to be honest to you and they're
18 supposed to tell you the truth and you're not getting that.
19 You're just getting a bunch of lies.

20 There was no bank accounts found in the apartment
21 that belonged to Akmal. She testified about the application
22 for the firearm and the sale receipt found under Akmal's
23 mother's name. The gun that was found in the apartment was
24 legally bought by the mother in Philadelphia. The Government
25 wants to you believe that the mother was a straw buyer; that

Summation - Mr. Guadagnino

1384

1 she bought the gun for her son because his fingerprints, no,
2 his DNA was on the gun. His DNA was on the gun, but there
3 were two other people's DNA on the gun, and you never heard
4 whose DNA that was. You never heard any evidence whose DNA --
5 you don't know if Murod Sultanov's DNA was on that gun. You
6 don't know if Jasur Kamolov's DNA was on there. Firdavs
7 Giyasov's. Firuz Juraev, you don't have that evidence, they
8 only tested one person, him.

9 And this is the gun that they want you to believe
10 was used against Jasur Kamolov in the Walgreen's parking lot.
11 We already went through that, it was not a black gun. It was
12 a very distinctive gun in the gun take a look at it when you
13 get into the jury room. The governments is going to say it
14 was dark in the car, everything looks black. Really? Take a
15 look at this gun. There was no TASER found in the apartment.
16 Allegedly, he kidnapped someone and TASED him. You saw one of
17 these special agents from Miami came up who used to work in
18 New York and say he took photographs of Firdavs Giyasov's neck
19 and that you can see distinctive TASER marks.

20 Now, this is a photograph taken of him after he
21 allegedly was beaten up and kidnapped when he went to the
22 63rd Precinct in Brooklyn that night after he got kidnapped,
23 they took these photographs. You see no chipped tooth, you
24 see in beating marks or anything. Unfortunately, he has some
25 acne, but you can't tell the difference between the acne and

Summation - Mr. Guadagnino

1385

1 the little marks and they're trying to that those are TASER
2 marks and that they're distinctive TASER marks.

3 There was no TASER found in that apartment on
4 April 18, 2019, no baseball bat was found, no applications
5 were found that match any of the identifications that were
6 found in the apartment. Nothing showing that that's Akmal's
7 apartment. And no evidence at all to ascertain whether or not
8 the phones or any of the wires actually worked.

9 So the Government says to you, look, we showed you
10 pictures of a very important piece of evidence. If you look
11 at the man who was doing the kidnapping in the video, he was
12 wearing a very distinctive plaid jacket. There's a picture of
13 a piece of a plaid jacket hanging in the closet and that
14 jacket matches the jacket that was in the video of the man who
15 was doing the kidnapping. The gun was tested for DNA. The
16 gun was brought into the courtroom. Akmal gets arrested
17 April 18, 2019, the kidnapping happened March 28, 2019,
18 20 days before Akmal's arrest. The Government had the video.
19 The Government saw the video. If you're looking for a plaid
20 jacket, and you arrest a man and you think that this plaid
21 jacket is important, collect it. Bring it into court. Show
22 the jury. Voucher it. Put it in a bag. And if you got the
23 ability to DNA test a gun, you can DNA test a jacket. If this
24 man were wearing that jacket and his skin or his hair got on
25 to the jacket, voilà, that would be wouldn't it that maybe

Summation - Mr. Guadagnino

1386

1 it's his jacket or maybe that it is the jacket.

2 Ladies and gentlemen, a piece of a plaid jacket in a
3 picture, and you're supposed to rely on that as decent
4 credible evidence by which you're supposed to make your
5 decision about this man's fate beyond a reasonable doubt.

6 Another person came into this court to testify that
7 I want you to pay particular attention to. You remember the
8 lady at the Bank of America, Ms. Maria Pogrebnyak. You
9 remember who he was she was the lady at the at the Bank of
10 America that opened up the business account for Firdavs
11 Giyasov. She has absolutely nothing to do, she has no
12 relationship to Firdavs. No relationship to Jasur Kamolov.
13 No relationship to Firuz Juraev.

14 What does she tell you? Giyasov did not look beat
15 up, no marks on his face; no marks on his neck. He was not
16 shaking; he was not nervous. Everyone was at the bank for an
17 hour and 15 minutes. She did not see anything out of the
18 ordinary.

19 She did not -- she had a check that was given some
20 business checks to them. And then after they opened up the
21 accounts they left. Here is a very important point that I
22 want you to consider about how you're being lied to and you
23 tell me if this makes sense. Firdavs Giyasov gets kidnapped
24 in the morning of March 28, 2019, on this theory that Akmal is
25 supposed to get paid money because Firdavs owes Akmal money.

Summation - Mr. Guadagnino

1387

1 The idea is, take Firdavs to the Bank of America, have him
2 open up a bank account there, a business bank account, so he
3 can deposit a check into that business bank account so that
4 later on the money can be withdrawn from that business bank
5 account, okay? I got a question for you maybe you can help me
6 answer this question because it is killing me and I don't know
7 the answer to it. If Firdavs Giyasov got kidnapped while he
8 was going to work that morning, he had no idea about anything
9 that was going on. He was surprised, he was TASED, he was put
10 into a car, he taken to the Bank of America.

11 You don't have any other evidence that during this
12 kidnapping when he was taken away in a moment maybe a half
13 hour or an hour maybe two hours later he went back to his
14 apartment and got something. You don't have any evidence to
15 that effect. He left his apartment allegedly people took him
16 in the car. He was kidnapped and then the next thing you know
17 he's at the Bank of America.

18 Here's my question to you. Maria Pogrebnyak said
19 that in order for her to open up a business account under this
20 man's business, she would have to see his business documents.
21 There were two ways that she could see his business documents.
22 Number one she could look it up on Lexis-Nexis and she
23 testified under oath she did not do that. Maria, how did you
24 open up his business account? How did you get his documents?
25 He gave them to me, he had those documents on him. Can you

Summation - Mr. Guadagnino

1388

1 believe the coincidence that the man who gets kidnapped that
2 same day just so happens to be walking around with
3 incorporation business documents in his backpack to be able to
4 coincidentally go to a bank and up a business account. Who
5 works around with their business documents, their
6 incorporation documents, their legal documents. That doesn't
7 make sense? It makes absolutely no sense?

8 A lot of the testimony is derived to make Akmal look
9 bad like he did something wrong. For example, at the time
10 when the FBI showed up to the apartment, the agent said that
11 they got a search warrant because when they knocked on the
12 door, they heard a sound of racking a firearm. Somebody like
13 they were loading or doing something to unload a gun, to just
14 sounded like it was very horrific.

15 Detective Jaworski from the New York City Police
16 Department testified when he recovered this gun it was
17 unloaded, it was in a box. It was up on a shelf. The
18 magazines were out of it; there were no bullets inside. There
19 were notice bullets in inner way in a bag but not in the gun.

20 Now, I want to get to a piece of evidence that I
21 think is very important, ladies and gentlemen, and I think
22 that is really the most important piece of evidence in the
23 whole case. I have a five-minute recording --

24 THE COURT: Hang on one second. Ladies and
25 gentlemen, I need you to stay focused, everyone, okay.

Summation - Mr. Guadagnino

1389

1 Everyone raise your hand, please. Okay. Thank you please
2 continue.

3 MR. GUADAGNINO: You have a five-minute recording in
4 evidence of a meeting between Murodjon Sultanov, Jasur
5 Kamolov, and attorney Albert Dayan. This is October 2019.
6 Akmal's in jail at the time. The meeting happens out on the
7 streets of Queens. Thank God Albert Dayan was smart enough to
8 record that meeting because in that meeting, you hear him
9 scolding Murodjon Sultanov telling him, Murodjon on
10 obstruction of justice, Murodjon, you're wrong. Don't be
11 insinuating that. Don't bring that up. Murodjon was trying
12 to get rid of Jasur Kamolov. Murodjon was trying to get rid
13 of Firdavs Giyasov. Firdavs Giyasov left the United States
14 but he is back in the United States today as we speak but he
15 left the United States in September.

16 Now, Murodjon Sultanov wanted to get rid of Jasur
17 Kamolov. And in that that meeting Albert Dayan continuously
18 scold Murodjon Sultanov. And this is a meeting where Murodjon
19 figured out a little later that the lawyer is recording him.
20 But not once during that conversation where you're meeting up
21 with an attorney where you're trying to say what you're trying
22 to do, do you hear the name Akmal Narzikulov mentioned not one
23 time. Nobody says oh, we got to get this person out of here
24 because the FBI is looking for him, they want to talk.
25 Tomorrow they're going to say something about Akmal we got to

Summation - Mr. Guadagnino

1390

1 protect Akmal. We got to make sure that Akmal Narzikulov has
2 no witnesses testify. Not once did you hear that, ladies and
3 gentlemen? Not one time. And, again, Murodjon Sultanov,
4 Murodjon Sultanov, you heard Murodjon Sultanov took Jasur
5 Kamolov. He got him involved in the business. Murodjon
6 Sultanov pays people, he pays the Taxi and Limousine
7 Commission fees. He uses his credit card. Murodjon Sultanov
8 is the person who is behind all of that, not Akmal Narzikulov.
9 Murodjon Sultanov, ladies and gentlemen, that is the person
10 who was orchestrating all of this. There he is.

11 What kind of scam, what kind of scheme does he have
12 going on with his underlings Firdavs Giasov, Jasur Kamolov,
13 Firuz Juraev. He wants Jasur to leave the United States after
14 the FBI goes talking to him in September of 2019. He's
15 scheming to get him out of country. This guy doesn't want the
16 truth to come out about himself. He's trying to avoid what he
17 can't avoid eventually.

18 Now, ladies and gentlemen, again, I implore you to
19 use your common sense. Use your good judgment. Listen to the
20 charges that the judge will give you regarding reasonable
21 doubt. How to evaluate the evidence. How to make your
22 decision.

23 Mr. Narzikulov is charged with eight different
24 counts. Conspiracy to unlawfully produce identification
25 documents. Conspiracy to commit kidnapping. Kidnapping.

Summation - Mr. Guadagnino

1391

1 Hobbs Act extortion conspiracy. Extortion. Threatening
2 physical violence against Jasur Kamolov. Using and carrying
3 and possessing a firearm and also conspiracy do tamper with a
4 witness. All of these charges are being fabricated by in man
5 and his three cohorts. It is not the defense's obligation to
6 present any kind of evidence or any kind of evidence to
7 New Hampshire gate anything.

8 The Government has the burden of proof. The
9 Government has the burden of proof and the defendant has the
10 presumption of innocence and I implore you that at the end
11 when you sift through all the evidence and you can have the
12 testimony read back to you. You can have the
13 cross-examinations read back to you. After you do your duty
14 as sworn jurors, and you follow the charges and the law that
15 the judge gives you, you will have to do justice, and justice
16 is not only finding someone guilty if the Government proves
17 beyond all reasonable doubt that the person is guilty, justice
18 is also being able to follow the law, use your common sense,
19 use your good judgment and find that the Government did not
20 prove their case and in this case the only verdict after you
21 do your duty as sworn jurors will be to find Akmal not guilty.

22 THE COURT: Thank you, Mr. Guadagnino. Let me see
23 counsel very briefly at sidebar.

24 (Continued on the next page.)

25

Sidebar

1392

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: Unless the Government and guarantee me
5 that you're going to finish by 2:00 I'm inclined to break for
6 lunch now because I don't want to starve the jury.

7 MR. BUFORD: I think it makes sense to break. I
8 don't think it will be much longer than 20 minutes but I can't
9 guarantee it.

10 THE COURT: Can you guarantee me half an hour?

11 MR. BUFORD: I think I could, your Honor, if that's
12 okay.

13 THE COURT: Let's do half an hour. We'll be done at
14 2:10. Okay.

15 (Sidebar discussion concludes.)

16 (Continued on the next page.)

17

18

19

20

21

22

23

24

25

Rebuttal Summation - Mr. Buford

1393

1 (In open court.)

2 THE COURT: All right hang on with us, ladies and
3 gentlemen, we'll have lunch soon right after the Government's
4 rebuttal.

5 Please proceed.

6 MR. BUFORD: Thank you.

7 Good afternoon, members of the jury. I'd like to
8 begin with counsel's observations about some of the witnesses
9 that you heard in this trial who testified pursuant to
10 agreements with the Government Jasur Kamolov, Firuz Juraev,
11 and Andrew Barrett.

12 There is no mystery about the terms of agreement
13 that these witnesses have with the Government are. Their
14 agreements are actually in evidence. They're Government's
15 Exhibits 605, 606 and 607. So you can have them with you in
16 the jury room when you deliberate.

17 And I expect Judge Cogan will instruct you that it
18 is up to you to determine whether these agreement, give those
19 witness incentive to lie or to tell the truth. I expect if
20 you look at the terms of the agreements, you will see that
21 what those individuals have done is agreed to tell the truth,
22 that those agreements showed they had no interest in the
23 outcome of this case i.e., whether you find the defendant
24 guilty or innocent and no promises have been made about what
25 sentences they will receive in this case.

Rebuttal Summation - Mr. Buford

1394

1 Now, I want you to remember that no one is under any
2 illusions about who these witnesses are and what they had
3 done. We told you from the beginning that you would hear
4 witnesses in this case who have admitted as having
5 participated in crimes. It would have been great if we
6 couldn't have appropriated to you only witnesses with
7 impeccable credentials and advanced degrees in science like
8 Dr. Cassandra Williams from the OCME. The defendant didn't
9 ask Dr. Williams to participate in his criminal driver's
10 license business. He asked Firuz Juraev and Jasur Kamolov.
11 And if you want to know how the defendant's criminal business
12 worked, you have to hear about it from people who participated
13 in the crime with the defendant those witnesses.

14 Now, those witnesses admitted to you that they had
15 lied in the past, but the question that's before you in this
16 trial is did they lie to you in this trial. And all of the
17 evidence backs up their testimony as Ms. Nguyen explained to
18 you in the Government's summation. Their testimony is
19 consistent with all of the rest of the evidence that you had
20 seen. It's consistent with the evidence recovered from the
21 defendant's apartment including the phones and the pictures on
22 them. It's consistent with the records of communications at
23 the time these events were taking place. The Facebook chat,
24 the toll records, the call logs from the phones, and the chats
25 including the Vibr chat between the defendant and Firuz on the

Rebuttal Summation - Mr. Buford

1395

1 day of the kidnapping in which the defendant says, I'm going
2 to take his green card essentially confessing, we submit, to
3 extorting Firdavs Giyasov.

4 (Continued on the next page.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. BUFORD: It's also backed up by the security
2 video footage you've seen of the kidnapping itself, as well as
3 the video of Firuz trying to cash the check at the Pay-O-Matic
4 and later depositing the check into his Chase account and
5 getting \$1,000 out of it. It's also backed up by the jail
6 calls where you hear the defendant in his own words
7 participating in a conspiracy to tamper with the witnesses.

8 I want to talk a little bit about some of the
9 specific arguments that defense counsel made. I won't be able
10 to address all of them, but I ask you to rely on Ms. Nguyen's
11 summations for anything that I can't get to you.

12 And I submit to you that most of the questions that
13 defense counsel raised or tried to raise are distractions.
14 They're trying to distract you from the evidence in the case,
15 such as asking if Firdavs had gone to the police, how come no
16 one was arrested that night? Members of the jury, you know
17 why, because the police and the FBI agents began to conduct an
18 investigation, an investigation that allowed them to do the
19 surveillance operation to see Firdavs and Jasur make a payment
20 consistent with the extortion scheme to the defendant. And
21 you know that that investigation resulted in the defendant's
22 arrest less than a month after the kidnapping.

23 Counsel also says there's no specific evidence
24 linking the defendant to the cheating scheme for the driver's
25 license. First of all, take a giant step back and consider

Rebuttal - Buford

1397

1 the evidence that was found in the defendant's apartment. You
2 saw the pictures that were on the phones that were recovered
3 there, dozens of driver's licenses, TLC exam appointment
4 confirmations, New York State driver's license applications,
5 pictures of the wireless earbuds that were used to do the
6 cheating scheme. And you also saw dozens of pictures of what
7 were unmistakably those ledger entries; CDL, TLC, as well as
8 the phone numbers and the money paid by the clients. You also
9 saw the yellow zipped packages containing the cheating
10 equipment. Not just one or two of those packages, a lot of
11 them. And you also saw the money, the cash, \$294,000 in cash,
12 the proceeds of the defendant's illegal business.

13 And as for specific cheating, one of the cheaters at
14 the TLC was Rustam Pulotov. And the phone that was taken from
15 him in the call log shows a contact with one of the phone
16 numbers associated with a SIM card in the defendant's
17 apartment, a contact as recently as April 2019. That's
18 Government Exhibit 402.1. Ms. Nguyen also told you about
19 Shukhrat Toshtemirov. A picture of his license is on a phone
20 recovered in the defendant's apartment. The defendant is
21 linked to the individual cheaters in this case.

22 Counsel also tried to suggest, I think, that Firdavs
23 Giyasov wasn't beaten badly enough for this to qualify as a
24 kidnapping, that he seemed to be okay later on in the day.
25 Members of the jury, you have seen the video; that is a

1 violent kidnapping or there's no such thing. You see the
2 defendant and Sukhrob shove Firdavs Giasov to the ground,
3 Taser him until he has to let go of the door handle, drag him
4 across the pavement and stuff him in the car. At a minimum,
5 the evidence shows that Firdavs went against his will.

6 There's a moment in the video Ms. Nguyen showed you at about
7 the minute mark and five seconds which you can see Firdavs
8 Giasov make eye contact with the woman in the lobby. And I
9 think we would all hope for a little bit more from our fellow
10 citizens because that woman did not help him, but in that
11 moment there is no doubt about what is happening there.
12 Firdavs Giasov is terrified. He is terrified because he's
13 being carried away against his will.

14 Counsel suggests that this couldn't have been an
15 extortion because when Firdavs was at the Bank of America, he
16 didn't try to scream or run for help or signal to anybody that
17 he was in danger. But consider the circumstances, members of
18 the jury. He had just been assaulted and Tased and he is
19 still in the power of his kidnappers. He is their prisoner.
20 You heard the testimony from Firuz that he sandwiched into the
21 back seat between the defendant and Sukhrob as they drive him
22 around from place to place. And also, consider this: You
23 couldn't have asked for a more public place than the lobby of
24 that apartment building, and you saw Firdavs yelling,
25 screaming trying to get anyone's attention, no help came to

1 him. And we submit to you what Firdavs learned from that is
2 that the defendant and Sukhrob were not going to be deterred
3 from hurting him just because they were in a public place and
4 that the better course for him was to stay quiet, be
5 submissive and try to ride this thing out until he could get
6 away. And that's exactly what the evidence shows that he did.
7 What did his cries for help get him at the apartment building?
8 A chipped tooth and Taser marks on his neck. That's why he
9 doesn't try to run out of the Bank of America, because he
10 knows that the defendant and Sukhrob tried to hurt him in the
11 beginning.

12 Counsel tries to suggest that the money in the
13 apartment building could have been part of a lending business
14 that the defendant's mother was running. There's no evidence
15 of that in the record. It's pure speculation. And it's also
16 fatally inconsistent with two key pieces of evidence. The
17 first is the ledger entries that you've seen which show the
18 nature of the defendant's business. They're not loans. They
19 say CDL, TLC, and they have the dollar amounts next to them.
20 It's the proceeds from the illegal driver business. It's also
21 inconsistent with the fact that the cheating equipment is
22 there in the defendant's apartment. This is not some
23 unofficial bank, it's a business to help people get driver's
24 license illegally. Now, there may have been times where the
25 defendant floated a particular license applicant the entry fee

Rebuttal - Buford

1400

1 or the charge to get the license and then charged that person
2 interest, but the overwhelming evidence shows that the nature
3 of the defendant's business was to get fraudulent driver's
4 licenses for his clients.

5 Counsel wonders why there's no picture of the
6 defendant's mother at the surveillance operation when Jasur
7 and Firdavs went to drop off the thousand-dollar payment.
8 Members of the jury, what is the suggestion here? There is no
9 dispute that Firdavs and Jasur drove to the defendant's
10 apartment building. Is it just the defendant's bad luck that
11 they were there to pay off somebody who happened to live in
12 the same building? The evidence shows they were there to pay
13 off the defendant. It was a payment for the extortion that he
14 was holding Firdavs' property for in order to get Firdavs to
15 pay, and that's exactly what happened.

16 On the incident in the Walgreens parking lot
17 involving the gun, Counsel points to certain inconsistencies
18 in the testimony between Firuz and Jasur about what happened
19 there and tries to suggest that they're in cahoots with one
20 another to make the whole thing up. And there certainly are
21 some inconsistencies, but members of the jury, we submit to
22 you that rather than show that those witnesses are lying,
23 those inconsistencies help their credibility. If they had
24 gotten together and made up a story, they would be perfectly
25 in sync, letter-perfect in their descriptions of how the event

1 occurred. Instead, there are slight differences in their
2 testimony, just like there would be if they were relying on
3 their memories. Your own common sense and life experience
4 tells you that people remember things, even vivid events,
5 differently, different details stand out. And the fact that
6 there are some inconsistencies shows, we submit, that they are
7 not making it up in cahoots to try to frame the defendant.

8 In addition, their accounts are the same in key
9 respects. Both remember that the defendant was angry because
10 he had learned Jasur had tried to warn Firdavs that they were
11 lining up to kidnap him. Both remember specifically that the
12 defendant had learned that because he saw a text message in
13 the defendant's -- in Firdavs's phone after he had taken it.
14 Both say that when Jasur told -- when confronted, Jasur told
15 the defendant that he had tried to warn him for his own good
16 because Firdavs had evidence, he could go to the police. And
17 both say that when the defendant pulled out the gun, bullets
18 spilled all over the floor of the car. Now, that last detail
19 is particularly significant, we submit, one, because it's the
20 kind of detail that it's hard to imagine two people
21 independently making up if they were trying to come up with a
22 story, and two, because it's consistent with the bullets that
23 you later saw in the apartment which were in a bag, loose.

24 Their testimony is also consistent with the fact
25 that the defendant's DNA is on the gun that was later found in

Rebuttal - Buford

1402

1 the apartment. And not just on the gun generally, on the
2 parts of the gun that you would hold if you were going to
3 point it at somebody. This is the testimony of Dr. Williams;
4 the textured grip, the sides of the trigger and the trigger
5 guard, the rear sight and the edges of buttons. It's no
6 surprise, members of the jury, that there is a mixture of DNA
7 on the gun. We know that the defendant's mother purchased the
8 gun and that Sukhrob was there with her. We also know that
9 Jasur held the gun. So it's certainly consistent with the
10 testimony that there's more than one person's DNA on it. But
11 remember the testimony of Dr. Williams; the person with the
12 most DNA on the gun is the defendant's, and his DNA is
13 conclusively on the gun, according to her expert testimony.
14 Counsel says the gun in the picture that was recovered from
15 the apartment looks different, it doesn't look black and that
16 the Government is trying to make you believe that if you saw
17 it at night in a car it looks black. Members of the jury, I
18 submit to you that if you see it in a brightly lit courtroom
19 in 225 Cadman Plaza, it looks black. The gun looks black.
20 And I think the testimony shows that Jasur and Firuz could
21 have concluded the gun was black based on their seeing it in
22 the car.

23 Counsel says the fact that Jasur held the gun after
24 he was threatened shows that this wasn't really a violent
25 extortion attempt. But remember, the defendant used the gun

Rebuttal - Buford

1403

1 to threaten Jasur, to get him to agree to pay Firdavs' debt.
2 Once he had threatened Jasur with the gun, the gun had served
3 its purpose and the defendant now had another person on the
4 hook for the money. It also serves the defendant's purposes
5 for Jasur to hold the gun because he will know that it's real
6 and he doesn't want to see that gun again. Allowing Jasur to
7 hold the gun turbocharges the defendant's threat and makes it
8 real and long lasting. And it worked because you know that
9 Jasur, about a week later, went with Firdavs to pay \$1,000 to
10 the defendant, precisely because he was afraid of the
11 defendant as a result of this meeting.

12 You also know that the gun was the defendant's
13 because it was purchased by his mother. And you saw the
14 paperwork for that gun. It's in evidence as
15 Government Exhibit 205. And you can see the defendant's
16 mother's identification card was presented at the time of the
17 gun purchase and her address is listed as Bustleton Avenue in
18 Pennsylvania, an address where she was not living at the time
19 the gun was bought in February of 2019. This is consistent
20 with the defendant's MO. He uses his mother as a front, as a
21 cover, as a smokescreen to hide the tools of his illegal
22 business. Remember the testimony of Special Agent Buscemi and
23 the pictures that he found of the vehicle registrations inside
24 the defendant's apartment. This is Government Exhibit 302-A
25 at page 43. It's a vehicle registration for a Ford in the

1 name of the defendant's mother at Bustleton, Pennsylvania and
2 of a Toyota also in the name of the defendant's mother with
3 the same address of Bustleton Avenue in Pennsylvania.

4 There was someone else there the day the gun was
5 purchased, Sukhrob Khamrokulov. And we know who that is, the
6 defendant's coconspirator, right-hand man. And look at the
7 notation in the records, "Call this number, (802) 289-0909."
8 You know by now that is one of the numbers assigned to the
9 many phones in the defendant's apartment. This was the number
10 that the people that the people at the gun shop were supposed
11 to used to contact the purchaser of the gun and it's one of
12 the phones that the defendant used to conduct his illegal
13 business on. The evidence has shown that the phones inside
14 the defendant's apartment were essentially work phones, phones
15 that he used to conduct his business, and he used this number
16 to purchase this gun. And don't forget in evidence at
17 Government Exhibit 309.11, from another of those phones, a
18 picture of Delia's Gun Shop, which is where the gun was
19 purchased.

20 Members of the jury, the defendant researched
21 Delia's Gun Shop and he sent Sukhrob to Pennsylvania with his
22 mother to make sure that the gun was in her name, just like
23 the cars. The defendant tries to use his mother as a front to
24 hide the tools of his trade, the phones, the cars and the gun.
25 That's how you know this really was his gun; it fits the

1 pattern.

2 On the witness tampering count, Counsel says that
3 you cannot believe the testimony of Andrew Barrett. But
4 remember, Barrett's testimony is totally consistent with all
5 the other evidence in the case. Barrett told you that the
6 defendant was trying to communicate with his attorney the fact
7 that payments had been made to Firdavs Giyasov that
8 Mr. Giyasov would be unavailable at trial. And the evidence
9 shows that's exactly what happened. The call detail records
10 show a phone call from Uzbekistan to Mr. Golub on the same day
11 that the defendant has these jail calls with his brother,
12 talking about the urgent need to communicate with the
13 attorney. And members of the jury, we submit, what reason
14 would there be to communicate this information to Mr. Golub if
15 it weren't true? For the defendant, it serves no purpose to
16 urgently communicate to your attorney evidence of a crime that
17 you didn't commit. The only way this plan makes sense is if
18 the information is true and the defendant is trying to tell
19 his attorney you can take it to the bank that the victim in
20 this case will not be available at trial and we should push
21 ahead for a speedy trial.

22 Mr. Barrett also told you the defendant bought
23 minutes from other inmates and you heard with your own ears
24 that that's true. You heard the introduction on the jail
25 calls where it says you will hear a call from inmate, and the

1 name that's not the defendant's, and then the defendant's
2 voice unmistakably speaking Tajic to the person on the other
3 line.

4 Counsel also tries to suggest that Murodjon Sultanov
5 is the one who came up with the witness tampering conspiracy.
6 And Murodjon, I would submit to you, seems to be going to a
7 lot of trouble help out the defendant if the defendant is not
8 involved in it. But you know from the jail calls that the
9 defendant was involved in it. You know that the defendant
10 tried to recruit Firuz to go to Jasur and find out what it was
11 that Jasur had told the FBI after he had been approached. And
12 this is the jail call at Government Exhibit 503-B, and it's a
13 call that took place on October 7th at 8:25 in the evening.
14 And remember the testimony of Firuz, that when he says that
15 he's waiting for somebody, he is literally waiting for Jasur
16 to come approach, to meet with him to talk about what Jasur
17 told the FBI. If you look at the next page,
18 Government Exhibit 503-B at page 3, you remember what the
19 defendant told Firuz about meeting with Jasur. "Don't sit in
20 his car." And also, "Make sure you see his phone to make sure
21 he's not recording you." Consider for a moment, members of
22 the jury, what the defendant is not saying to Firuz in this
23 situation. He's not saying how is this happening? Where is
24 this coming from? I don't understand the charges against me.
25 He's saying make sure you check Jasur's pockets so he's not

Rebuttal - Buford

1407

1 recording you and don't sit in his car because that might be
2 wired up by the FBI, too. This shows the defendant's guilty
3 knowledge about what he has done and what he is doing in
4 trying to tamper with these witnesses. And then two days
5 later, on October 9th, there's another call between the
6 defendant and Firuz. This one is in evidence as
7 Government Exhibit 508-B, the translation. And we submit to
8 you the evidence indicates that on this night Firuz met with
9 Jasur, with Murod there -- this is the night that Murod and
10 Jasur went to go see Albert Dyan -- and you see in this call,
11 on page 4, Firuz saying to the defendant that he is there with
12 Ray. Remember, Ray or Reesh (ph) is the code name for Murod.
13 He actually offers to put Murod on the phone and Murod says
14 no. And look at the last line, the last row. The defendant
15 says, "Explain to him about the Qe" -- remember Firuz told you
16 that's the money -- "and Daroz." That's the code name for
17 Jasur. The defendant, in realtime, is coordinating the
18 witness tampering with Jasur. He is aware of what's happening
19 in the moment, on the phone with Firuz, making sure this is
20 happening the way he wants this to happen. The jail calls
21 prove the defendant is involved in the witness tampering
22 conspiracy.

23 In addition, on all the conspiracy charges, I expect
24 Judge Cogan will instruct you that in order to convict the
25 defendant, the Government does not have to prove that the

Rebuttal - Buford

1408

1 defendant was in charge of any of these conspiracies, only
2 that he was a member or a participant in it. But the evidence
3 has shown beyond a reasonable doubt, even though we don't have
4 to prove it, that the defendant was in charge of these
5 conspiracies, that he was running a driver's license fraud,
6 that he did come up with the idea to kidnap the defendant,
7 that he was trying to extort -- excuse me, Firdavs and Jasur,
8 that he was -- he didn't try to kidnap Firdavs. He was trying
9 to extort Firdavs and Jasur. If you're trying to figure out
10 who was in charge of the conspiracy, it's the person with
11 \$294,000 in their closet. In every organization, money flows
12 from the bottom to the top, and the evidence has shown beyond
13 a reasonable doubt that the defendant was at the top of this
14 criminal pyramid.

15 Members of the jury, the time has come to hold the
16 defendant accountable for his conduct. We ask you to return
17 the only verdict consistent with the evidence you have heard,
18 a verdict of guilty on all counts. Thank you.

19 THE COURT: All right. Thank you.

20 Ladies and gentlemen, we will take our lunch now. I
21 want to take only 45 minutes so I can get going on the
22 instructions to you which themselves take a little while.
23 Please remember not to talk about the case amongst yourselves
24 or with anyone else. We will come back here at ten minutes to
25 three. Have a good lunch.

Rebuttal - Buford

1409

1 (Jury exits the courtroom.)

2 All right. Mr. Guadagnino, I'm sorry I had to
3 interrupt your closing, but I observed the same phenomena with
4 Juror No. 9 that we have been having and I really wanted him
5 to pay attention.

6 MR. GUADAGNINO: All I have to say is thank you,
7 your Honor.

8 THE COURT: Okay. See you at ten to three.

9 MS. NGUYEN: Thank you.

10 (Luncheon recess was taken.)

11

12 (Continuing on the following page.)

13

14

15

16

17

18

19

20

21

22

23

24

25

Jury Charge

1410

1 AFTERNOON SESSION

2 (In open court - jury not present.)

3 THE COURT: Let's bring in the jury.

4 (Jury enters the courtroom.)

5 THE COURT: Now that the evidence has been
6 presented, it is my responsibility to instruct you on the law.
7 You are going to get a copy of the instructions that I am
8 reading you now, so do not feel you have to write anything
9 down, but take any notes that you want to.

10 The instructions I am going to give you are going to
11 be in three parts. First, I am going to instruct you on the
12 general rules that define and govern the duties of jurors in a
13 federal criminal case. Second, I am going to instruct you as
14 to the legal elements as to each of the crimes that have been
15 charged here. And then third, I am going to give you some
16 important principles to use during your deliberations. The
17 third part is short. The first two parts are fairly long,
18 just so you know what is coming.

19 It has been very obvious to me that you have
20 faithfully discharged your duty to listen carefully and
21 observe each witness who testified during the trial. Please
22 give me that same attention as I give these instructions to
23 you now. It is my job to instruct you on the law. You have
24 to accept my instructions and apply them to the facts as you
25 determine them. It would violate your sworn duty to base a

Jury Charge

1411

1 verdict on any other view of the law other than the one that I
2 am about to give you. This means you have to follow my
3 instructions regardless of any opinion that you might have as
4 to what the law is or what you think it should be and
5 regardless of whether any attorney has stated a legal
6 principle differently from how I am stating it. You also have
7 to consider these instructions as a whole during your
8 deliberations, do not single out any one of them as alone
9 stating the law.

10 Now, please understand, I have no opinion at all as
11 to the verdict that you should reach. If during the trial it
12 seemed to you I made any kind of expression or question or
13 ruling that seemed to indicate that I do have an opinion about
14 the case, I did not mean to do that, because I do not. So
15 please disregard anything you think you may have picked up.
16 Also, we had a couple of sidebars with counsel. Those were
17 just for scheduling purposes. Do not worry about what
18 happened there.

19 Now, you are going to be the sole and exclusive
20 judges of the facts in this case. You could be wearing black
21 robes for the job that you are about to do. It is going to be
22 your duty to determine the weight of the evidence and the
23 credibility of the witnesses and you resolve any conflicts
24 that there may be in the testimony, you draw whatever
25 reasonable inferences you decide to draw from the facts as you

Jury Charge

1412

1 have determined them. Now, please remember that in carrying
2 out this duty, you took an oath to render judgment fairly and
3 impartially, without prejudice or sympathy and without any
4 fear. You took an oath to base your verdict solely on the
5 evidence in the case and the applicable law as I am giving it
6 to you now. Please remember that all parties are here today
7 equally under the law. The fact that the Government is a
8 party and the prosecution is brought in the name of the
9 United States does not entitle the Government or its witnesses
10 to any different consideration than the defendant. Now,
11 please do not be swayed by sympathy for any of the parties or
12 what the reaction of the parties or the public might be to
13 your verdict. You must not be influenced by any feelings you
14 might have about the nature of the crimes charged or by any
15 feelings that you might have about the race, religion,
16 national origin, gender or age of the parties or anyone
17 participating in the trial. Do not bear any prejudice against
18 any attorney or that attorney's client merely because during
19 the course of the case the attorney made an objection or asked
20 for a sidebar or asked me for a ruling on a point of law. If
21 you did, during the trial, form any reactions or opinions of
22 any kind about the lawyers in this case, you must disregard
23 those. The personalities and conduct of the counsel are not
24 what is at issue in this case. Also, you must not consider
25 the question of the defendant's possible punishment if you

Jury Charge

1413

1 find him guilty. The duty of imposing a sentence rests
2 exclusively with the Court if there is a conviction, and you
3 cannot allow that consideration to enter into your
4 deliberations at any point.

5 Now, the defendant has pled not guilty to the
6 indictment and, as a result, the burden is on government to
7 prove the defendant's guilt beyond a reasonable doubt. That
8 burden never shifts to the defendant because the law does not
9 impose on a criminal defendant any duty to call or
10 cross-examine witnesses or produce any evidence at all. As
11 you know, the defendant has been charged with crimes in a
12 document that we call an indictment. The indictment is not
13 any evidence at all of guilt. It is just a formal way that
14 the Government tells a person what crimes he is accused of
15 committing. It does not raise even any suspicion of guilt.
16 The defendant starts the trial here with a clean slate, with
17 no evidence at all against him. The law presumes that he is
18 innocent of all the charges against him. That presumption of
19 innocence stays with him and it alone is sufficient to acquit
20 him unless the Government presents evidence here in court that
21 overcomes the presumption and convinces you beyond a
22 reasonable doubt that he is guilty. That means, again, that
23 the defendant has no obligation to present any evidence,
24 whether by calling witnesses or producing any other kind of
25 evidence. The defendant has no obligation to prove to you in

Jury Charge

1414

1 any way that he is innocent. It is up to the Government to
2 prove that he is guilty. Because you must presume the
3 defendant to be innocent, you must find the defendant not
4 guilty unless and until the Government convinces you beyond a
5 reasonable doubt that he is guilty.

6 So by now it has probably occurred to you, what is a
7 reasonable doubt? Well, the words almost define themselves.
8 It is a doubt based on reason and common sense. It is a doubt
9 that a reasonable person would have after carefully weighing
10 all the evidence. It is a doubt that would cause a reasonable
11 person to hesitate to act in a manner of importance in their
12 own personal life. Proof beyond a reasonable doubt must be of
13 such a convincing character that a reasonable person would not
14 hesitate to rely on it in making an important decision. A
15 reasonable doubt, therefore, is not an impulse or a whim, it
16 is not speculation or a suspicion, it is not an excuse to
17 avoid the performance of an unpleasant duty and it is not
18 sympathy for any party. The law does not require the
19 Government to prove guilt beyond all doubt. Proof beyond a
20 reasonable doubt is sufficient to convict. If after fair and
21 impartial consideration of all the evidence and the lack of
22 evidence you are satisfied of the defendant's guilt beyond a
23 reasonable doubt, then you should vote to convict. On the
24 other hand, if after fair and impartial consideration of all
25 the evidence and any lack of evidence you have a reasonable

Jury Charge

1415

1 doubt, then it is your duty to acquit the defendant.

2 Now, you will note that the defendant chose not to
3 testify in this case. Under our Constitution, a defendant has
4 no obligation to testify or present any evidence. You may,
5 therefore, not attach any significance to the fact that the
6 defendant did not testify. No adverse inference against the
7 defendant may be drawn by you just because he did not take the
8 witness stand. You may not consider this against the
9 defendant in any way during your deliberations. In fact,
10 during your deliberations, nobody should even mention that the
11 defendant did not testify because it is irrelevant to your
12 deliberations.

13 Now, the fact that one party called more witnesses
14 and introduced more evidence than the other does not mean that
15 you should necessarily find the facts in favor of the side
16 offering the most witnesses. By the same token, you do not
17 have to accept the testimony of any witness who has not been
18 contradicted or impeached if you find that that witness was
19 not credible.

20 Now, let me go over with you the various kinds of
21 evidence that you heard. It is going to be your recollection
22 of the evidence that counts here. You should consider the
23 evidence in light of your own common sense and experience and
24 you can draw any reasonable inferences that you think are
25 appropriate from the evidence. The evidence in this case

Jury Charge

1416

1 consisted of the sworn testimony of the witnesses, the
2 exhibits received in evidence, and that stipulation that I
3 read to you this morning. I will talk to you about each one
4 of those a little bit.

5 A stipulation, as I told you this morning, is an
6 agreement among the parties that a certain fact is true. You
7 should regard that fact as true.

8 As to exhibits, you may only consider exhibits which
9 I have received into evidence. You may not consider documents
10 which have been referred to but not received into evidence.

11 Moreover, as I told you at the beginning of the
12 trial, only the witnesses' answers are evidence, a lawyer's
13 questions are not evidence. You will also have to remember
14 that the lawyers' statements, their openings and closings --
15 and I think they were pretty good about this, but just in case
16 they said anything to me during the trial, that is not
17 evidence for you to consider.

18 In addition, I know you all tried very hard to stay
19 away from any publicity about the case because I asked you to
20 every day, but if by any chance you ran into some and you were
21 not able to stay away from it, then you must set it aside now,
22 you must put it out of your mind.

23 Now, you can consider both direct and circumstantial
24 evidence in deciding whether the Government has met its burden
25 of proof. Direct evidence is evidence that proves a disputed

Jury Charge

1417

1 fact directly; that is, when a witness testifies about what
2 the witness saw, heard or observed. Circumstantial evidence
3 is evidence that tends to prove a disputed fact by proof of
4 other facts. The law makes no distinction between direct and
5 circumstantial evidence and you can give either or both
6 whatever weight you conclude is warranted.

7 There is an example we often use in the courthouse
8 to illustrate to jurors the differences between direct and
9 circumstantial evidence. Suppose when you got here this
10 morning -- and I think this was the case -- the sun was
11 shining and it is a nice day. But as you sit here, we have
12 got no windows, you do not know what it is doing outside. I
13 read there was a 10 percent chance of rain this morning; it
14 could be raining. You have no direct evidence of what is
15 going on outside. But if somebody were to walk into the
16 courtroom and they are wearing a raincoat and carrying an
17 umbrella and the umbrella and raincoat are dripping wet, it
18 would be reasonable and logical for you to conclude that it is
19 raining outside. On the other hand, if people came in and did
20 not have wet raincoats and wet umbrellas, you could reasonably
21 conclude that it is not raining. The raincoat, wet or dry,
22 the presence of the raincoat or the absence of the raincoat,
23 that is what we mean by circumstantial evidence. You infer on
24 the basis of reason, experience and common sense from an
25 established fact or the lack of an established fact the

Jury Charge

1418

1 existence or nonexistence of some other fact. That is all
2 there is to it.

3 Now, already quite a few times in these instructions
4 you have heard me use the term "inference." And the attorneys
5 have argued, particularly in their closing statements, that
6 you should or should not make different inferences based on
7 the evidence presented during the trial. So, what is an
8 inference? An inference is not a suspicion or a guess. It is
9 a reasoned, logical decision to conclude that a fact exists on
10 the basis of another fact that you know exists. It is a
11 deduction or a conclusion that you are permitted but not
12 required to draw from the facts that have been proved by
13 direct or circumstantial evidence. Remember that it is going
14 to be you and you alone to decide what inferences you want to
15 draw and not draw. I will remind you, however, that whether
16 based on direct or circumstantial evidence or upon the
17 logical, reasonable inferences that you draw from such
18 evidence, you have to be satisfied that the Government has
19 proved the defendant's guilt beyond a reasonable doubt before
20 you may vote to convict.

21 Now, there were a couple of charts and summaries in
22 this case which I am going to allow you to see and I allowed
23 you to see during the trial without going into the underlying
24 documents just to save some time and not make you go through a
25 pile of papers. You can consider those charts and summaries

Jury Charge

1419

1 as you would any other evidence.

2 Now, I have told you what you may properly consider
3 and infer as you are sifting through the evidence in this
4 case. Now I am going to tell you what you may not consider.
5 Again, the objections that the lawyers made, those are not
6 evidence. Testimony and exhibits can only be admitted into
7 evidence if they meet certain criteria or standards, it is the
8 lawyer's obligation to object if they think the evidence does
9 not meet those standards. Do not be influenced by any party
10 just because their lawyer made an objection. That does not
11 cut one way or the other. Similarly, I made a couple of
12 rulings on objections to some of the questions. Do not think
13 that means that I want one party to win or I think that party
14 has a better case. That is not the case at all. These are
15 technical evidentiary rules that have no bearing on your
16 deliberations.

17 Now, the law does not require any party to present
18 all available evidence or subpoena as witnesses everyone who
19 was present at any time or place or who might have knowledge
20 of the matters at issue in this case. Do not draw any
21 inferences or reach any conclusions as to what witnesses who
22 were not here may have testified to had they been called. The
23 law also does not require any party to produce as exhibits all
24 papers and all objects mentioned during the trial, but each
25 party had an equal opportunity or a lack of opportunity to

Jury Charge

1420

1 subpoena those witnesses and introduce that evidence. Your
2 concern is to determine, based upon the evidence that has been
3 presented, whether the Government has met its burden to prove
4 that the defendant is guilty beyond a reasonable doubt. Do
5 not speculate about evidence that was not presented at the
6 trial. That being said, as I have told you, you always have
7 to remember that the law does not impose on a criminal
8 defendant the burden or duty of calling any witnesses or
9 producing any evidence, and the burden of proof is always on
10 the Government.

11 Now, you also may not draw any inference towards
12 either party from the fact that other people who were involved
13 in the offenses charged in the indictment are not on trial
14 before you. You may not speculate as to the reason why or
15 allow their absence as parties to influence your deliberations
16 in any way. Your concern is solely the defendant on trial
17 before you. The fact that these other individuals are not on
18 trial is not your concern. You are being asked to decide
19 whether or not the Government has proven beyond a reasonable
20 doubt the guilt of this defendant. You are not being asked
21 whether any other person has been proven guilty. Your verdict
22 has to be solely on the evidence or lack of evidence as to
23 this defendant in accordance with these instructions and
24 without regard to whether the guilt of other people has or has
25 not been proven.

Jury Charge

1421

1 Now, you have heard testimony about evidence
2 obtained pursuant to the search of the defendant's residence.
3 That evidence was obtained lawfully. The use of this
4 procedure to gather evidence is perfectly lawful and the
5 Government has the right to use such evidence in this case.
6 Now, during the trial you may have heard arguments regarding
7 law enforcement techniques and practices. You may consider
8 that argument in determining whether the Government has met
9 its burden of proof. You are instructed, however, that there
10 is no legal requirement that the Government use any specific
11 techniques or practices. Similarly, you should not be
12 concerned about whether certain techniques may not have been
13 used. Simply put, law enforcement techniques are not your
14 concern.

15 Now, it is also your duty as jurors to determine the
16 credibility of the witnesses you heard and measure the
17 importance of their testimony. You have to decide where the
18 truth lies, and that will require you to judge the testimony
19 you listened to and observed. You should carefully scrutinize
20 the testimony, the circumstances under which each witness
21 testified, and any other matter in evidence that may help you
22 decide the truth of and weight to assign to any witnesses'
23 testimony. Your decision whether to believe a witness may
24 depend on how the witness impressed you. Was the witness
25 candid and frank or did it seem as if the witness was hiding

Jury Charge

1422

1 something, being evasive or suspect in some way? How did the
2 testimony on the witness's direct examination compare with the
3 witness's testimony on cross-examination? Was the witness's
4 testimony consistent or inconsistent? Did it appear that the
5 witness knew what the witness was talking about? Did the
6 witness strike you as somebody who is trying to report their
7 knowledge accurately? How much you choose to believe a
8 witness may also be influenced by a witness's bias. Does the
9 witness have a relationship with the Government or the
10 defendant that may affect how the witness testified? Does the
11 witness have some incentive, loyalty or motive that might
12 cause the witness to shade the truth? Or does the witness
13 have some bias, prejudice or hostility that may have caused
14 the witness, whether consciously or not, to give you something
15 other than a completely accurate account of the facts?
16 Evidence that a witness may be biased towards one of the
17 parties requires you to view that witness's testimony with
18 caution, to weigh it with great care, and to subject it to
19 close scrutiny. In other words, what you have to try to do in
20 deciding credibility is to size a person up just as you would
21 in any important matter where you are trying decide if a
22 person is truthful, straightforward and accurate in their
23 recollection. How much you believe a witness may also be
24 influenced by any interest that the witness may have in the
25 outcome of the case. That interest may create a motive to

Jury Charge

1423

1 testify falsely, to advance that witness's own personal or
2 professional interests. That is not to suggest that every
3 witness who has an interest in the outcome of the case is
4 going to testify falsely, not at all. It is for you to decide
5 to what extent, if at all, a witness's interest is affected or
6 colored the witness's testimony. You should specifically
7 consider evidence of resentment or anger that some witnesses
8 may have towards a defendant. Evidence that a witness is
9 biased, prejudiced or hostile toward a defendant requires you
10 to view that witness's testimony with caution, to weigh it
11 with care and again to subject it to close and searching
12 scrutiny. Even if you think a witness was not biased, you
13 should still consider whether the witness had an opportunity
14 to observe the facts that he testified about, as well as the
15 witness's demeanor and ability to communicate effectively.
16 Ask yourselves whether a witness's recollection of the facts
17 stands up in light of the rest of the evidence. You have to
18 be guided by your common sense, your good judgment and your
19 life experience.

20 Now, in this case, you know, witnesses usually are
21 not allowed to testify as to their opinions. They have to
22 state facts. But I did permit a certain witness to express
23 her opinions about matters that are at issue in the case. A
24 witness can be permitted to testify to an opinion on those
25 matters about which she has special knowledge, skill,

Jury Charge

1424

1 experience and training. That testimony is presented to you
2 on the theory that someone who is experienced and
3 knowledgeable in a particular field can assist you in
4 understanding the evidence or in reaching an independent
5 decision on the facts. In weighing this opinion testimony,
6 you may consider the witness's qualifications, her opinions,
7 the reasons for testifying, as well as all of the other
8 considerations that I have just talked to you about when
9 considering any witness's testimony. You can give her opinion
10 whatever weight, if any, you think it deserves in light of all
11 the evidence in the case. You should not, however, accept
12 opinion testimony merely because I allow the witness to
13 testify concerning her opinions. That is up to you. Nor
14 should you substitute it for your own reason, judgment and
15 common sense. Again, that is because the determination of the
16 facts in this case rests exclusively with you.

17 Now, there has been evidence that the defendant made
18 certain statements in which the Government claims he admitted
19 certain facts charged in the indictment. In deciding what
20 weight to give the defendant's statements, you should first
21 examine with great care whether each statement was made, in
22 fact, and whether if it was, it was voluntarily and
23 understandingly made. You can give those statements such
24 weight as you feel they deserve in light of all the evidence.

25 Also, you heard testimony from a number of witnesses

Jury Charge

1425

1 employed as law enforcement officers or employees of the
2 Government. The fact that a witness may be employed by the
3 Government as a law enforcement official or employee does not
4 mean that their testimony is necessarily deserving of more or
5 less consideration or greater or lesser weight than that of
6 any other witness. At the same time, it is quite legitimate
7 for defense counsel to try to attack the credibility of a law
8 enforcement witness on the ground that their testimony may be
9 colored by a personal or professional interest in the outcome
10 of the case. It is going to be your decision after reviewing
11 all of the evidence whether to accept the testimony of a law
12 enforcement or government witness and to give that testimony
13 whatever weight, if any, you think that it deserves.

14 Now, you also heard that the Government's lawyers
15 interviewed -- I think it came out that they interviewed a
16 couple of the witnesses when preparing for the trial. Do not
17 draw any unfavorable inferences from that testimony. The
18 attorneys were obligated to prepare this case for you as
19 thoroughly as possible, and one way to accomplish that is to
20 properly interview witnesses before the trial and is necessary
21 throughout the course of the trial.

22 Now, you also heard from witnesses who testified
23 that they were involved in one or more of the charged crimes
24 with the defendant. Experience will tell you that the
25 Government sometimes must rely on the testimony of witnesses

Jury Charge

1426

1 who admit to participating in criminal activity. The law
2 allows the use of cooperating witness testimony. It is the
3 law in federal courts that such testimony may be enough even
4 standing alone for a conviction if the jury finds that the
5 testimony establishes guilt beyond a reasonable doubt.

6 Because of the interest both unindicted and indicted
7 cooperating witnesses may have in testifying, the testimony
8 should be scrutinized with special care and great caution.

9 The fact that the witness may benefit from the witness's
10 cooperation may be considered by you as bearing on their
11 credibility. Like the testimony of any other witness,
12 cooperating witness testimony should be given such weight as
13 it deserves in light of the facts and circumstances before
14 you. You have to take into account the witness's demeanor and
15 candor, the strength and accuracy of the witness's
16 recollection, their background and extent to which their
17 testimony is or is not corroborated by other evidence in the
18 case.

19 You may consider whether a cooperating witness has
20 an interest in the outcome of the case and, if so, whether
21 that interest has affected the testimony you heard. You
22 should ask yourselves whether the witness would benefit more
23 by lying or by telling truth. And you should consider who
24 makes that determination. You should ask yourselves whether
25 the witness would benefit more by testifying in a manner to

Jury Charge

1427

1 please the Government and whether such a benefit makes their
2 testimony unreliable or not credible. You should consider
3 whether any aspect of the witness's testimony was made up in
4 any way because that witness believed or hoped that they would
5 somehow receive favorable treatment by testifying falsely or
6 whether they believe that their interest would be better
7 served by testifying to the truth. If you believe that the
8 witness was motivated by hopes of personal gain such as
9 avoiding prison or a significant prison sentence, was the
10 motivation one that would cause the witness to lie or was it
11 one that would cause the witness to tell the truth? Did this
12 motivation color the witness's testimony? If you think the
13 witness's testimony was false, you should reject it. However,
14 if after a cautious and careful examination of the cooperating
15 witness's testimony you are satisfied that the witness told
16 you the truth, then you should accept it.

17 Now, it came up a couple of times with these
18 cooperating witnesses, you know, how are they going to be
19 sentenced, and I want to just tell you what the procedure is
20 so you understand the way it works. When somebody decides to
21 cooperate with the Government, the Government does not
22 determine what sentence they are going to get. In fact, the
23 Government typically does not even make a recommendation to
24 the sentencing court as to how much time the Government
25 believes they should be sentenced to. What the Government

Jury Charge

1428

1 will do, if it is satisfied with the witness's efforts of
2 cooperation, is it will write to the sentencing judge what you
3 heard referred to as a 5K1 letter. What that letter does is
4 it sets forth the nature of the crimes that the cooperating
5 witness has committed and all of the cooperation that the
6 witness has undertaken. Then, the judge who has to do the
7 sentencing takes that letter, together with a lot of other
8 information about the cooperating witness and all that
9 witness's crimes, and it is the judge who exclusively decides
10 what the sentence should be, not the Government.

11
12 (Continuing on the following page.)
13
14
15
16
17
18
19
20
21
22
23
24
25

Charge of the Court

1429

1 (Continuing)

2 THE COURT: All that a cooperating witness gets from
3 the Government, if the Government is satisfied with their
4 cooperation, is this 5K1 letter. It's the Government's
5 decision as to whether to submit the letter, but it's the
6 judge's decision alone as to what the sentence should be.

7 Now let me talk to you about statements made by
8 co-conspirators. I admitted into evidence against the
9 Defendant the acts and statements of others because these acts
10 and statements were committed by persons who the Government
11 contends were also confederates or co-conspirators of the
12 Defendant on trial. The reason for allowing this evidence to
13 be received against the Defendant has to do with the nature of
14 the crime of conspiracy. And I'm going to instruct you on
15 that in great detail, but for now just talking about evidence.

16 A "conspiracy" is often referred to as a partnership
17 in crime. Thus, as in any other types of partnerships, when
18 people enter into a conspiracy to accomplish an unlawful end,
19 each and every member becomes an agent for the other
20 conspirators in carrying out the conspiracy. Accordingly, the
21 reasonably foreseeable acts, the declarations, the statements,
22 and omissions of any member of the conspiracy and in
23 furtherance of the common purpose of the conspiracy are deemed
24 under the law to be the acts of all of its members. All of
25 the members are responsible for such acts, declarations,

Charge of the Court

1430

1 statements, and omissions.

2 Now, in this indictment you're going to deliberate
3 on Counts One, Two, Four, and Eight allege that the Defendant
4 participated in a conspiracy. If you find beyond a reasonable
5 doubt that a Defendant was a member of the conspiracy charged
6 in those counts, then any acts done or statements made in
7 furtherance of the conspiracy by persons also found by you to
8 be members of that conspiracy may be considered against the
9 Defendant. This is so even if such acts were done and
10 statements were made in the Defendant's absence and without
11 his knowledge.

12 Now, we had a lot of interpretations in this trial.
13 The Tajic and Russian languages were used for some of the
14 evidence. As you observed, some witnesses testified in Tajic
15 through an interpreter. The evidence you are to consider and
16 on which you must base your decision is only the English
17 language interpretation and translations presented in this
18 court. I have no idea about whether any of you speak Tajic or
19 Russian, but, if you do, put it aside because it's the English
20 that you heard that you have to consider.

21 You have to rely solely on the evidence presented in
22 the English interpretation. Don't make any assumptions about
23 a witness or a party based solely on the use of an interpreter
24 to assist that witness or party. If somebody is more
25 comfortable testifying in a foreign language, then we want

Charge of the Court

1431

1 them testifying in a foreign language but we want you to go by
2 what the interpreter says they're saying.

3 There are also audio recordings of various
4 conversations that were entered into evidence. The
5 transcripts of foreign language recordings have also been
6 admitted into evidence. For those transcripts of those
7 foreign language recordings, I instruct you that it's the
8 English translation reflected in the transcript that is the
9 evidence.

10 So, if you heard something and you speak Tajic or
11 Russian and you think it's different from what's in the
12 transcript, you have to go by the transcript. Again, I don't
13 know that any of you do, but just in case.

14 Whether you agree or disagree with any recording or
15 translations is not something for you to consider. The
16 recordings were made in a lawful manner and that evidence was
17 properly admitted in this trial. So, you must, therefore,
18 regardless of any personal opinion about the interpreter or
19 what the interpreter should have said, you have to give this
20 evidence full consideration along with all the other evidence
21 in the case. Of course, like everything else, it's for you to
22 decide what weight, if any, you want to give to this evidence.

23 Okay. That concludes part one, which may be the
24 longest part of the instructions. Give me just a second.

25 (Pause in proceedings.)

Charge of the Court

1432

1 THE COURT: For this portion of the instructions
2 ladies and gentlemen, I'm going to project it on your screens
3 and I'm going to project it on the overhead so you can read
4 along. It's a little complex. And even though you're going
5 to have the instructions with you, I think it will be easier
6 for you to follow what I'm saying.

7 Please, though, don't get lost in the instruction.
8 Just like I told you with taking notes, listen to me, please.
9 You'll be able to read it later, but I think it might help you
10 understand what I'm saying if you can see it as well as listen
11 to me.

12 Go ahead, Melonie.

13 (Exhibit published to the jury.)

14 THE COURT: These are the legal elements of the
15 crimes charged in this case.

16 First, as I mentioned, the Defendant is formerly
17 charged in an indictment. That's simply notice of what the
18 Defendant has been charged with. I'm going to refer to each
19 count by the number assigned to it in the indictment. There
20 are eight counts in this indictment, One through Eight. You
21 have to consider each count of the indictment separately and
22 you have to return a separate verdict for each count in which
23 the Defendant is charged.

24 Let me give you some general words that you're going
25 to see a lot in this indictment for all the counts: Many of

Charge of the Court

1433

1 the charges contain the terms "knowingly," "intentionally," or
2 "willfully." I'll tell you right now what those mean.

3 A person acts "knowingly" when he acts intentionally
4 and voluntarily and not because of any accident, mistake, or
5 carelessness or ignorance. Whether a defendant acted
6 knowingly may be proven by his conduct and by all the facts
7 and circumstances surrounding the case.

8 A defendant acts "intentionally" when he acts
9 deliberately and purposefully. A defendant's act must have
10 been the product of his conscious objective rather than the
11 product of a mistake or accident.

12 And then a person acts "willfully" if he's acting
13 knowingly and purposely with an intent to do something that
14 the law forbids; that is to say, with a bad purpose, to
15 disobey or disregard the law.

16 Now let's talk about conspiracy. That's as a
17 general matter before I go through each conspiracy count in
18 the complaint. Again, One, Two, Four, and Eight of the
19 indictment charge the Defendant conspired to commit a
20 particular crime.

21 The essence of the charge of conspiracy is an
22 understanding or agreement between or among two or more people
23 that they're going to act together to accomplish a common
24 objective that they know is unlawful.

25 You should understand that a conspiracy is an

Charge of the Court

1434

1 independent offense. It's a crime in and of itself regardless
2 of which whether the goal of the conspiracy is accomplished.
3 That is, it's separate and distinct from the actual violation
4 of any specific federal law. The law refers to those
5 violations as substantive crimes, but what we're talking about
6 here are conspiracy crimes.

7 When I instruct you on each conspiracy charge, I'm
8 also going to instruct you on the element of the substantive
9 underlying crime that is the object of the conspiracy for each
10 count. However, because conspiracy to commit the substantive
11 crime is an independent offense from the substantive crime
12 itself, you may find the Defendant guilty of the crime of
13 conspiracy to commit the substantive crime even if the
14 substantive crime that was the object of the conspiracy was
15 not actually committed.

16 Now, let me go over the elements of the conspiracy.
17 For most conspiracies, the Government has to prove each of the
18 following elements beyond a reasonable doubt: First, that two
19 or more people entered into a particular unlawful agreement
20 charged in that conspiracy count; and, second, that the
21 Defendant knowingly and willfully became a member of the
22 conspiracy. Now let me go over each one of those counts in
23 more detail.

24 First, the Government has to prove beyond a
25 reasonable doubt that two or more people entered into the

Charge of the Court

1435

1 unlawful agreement charged in the particular count that you
2 are considering. In other words, a person can't commit the
3 crime of conspiracy by himself; rather, the proof has to
4 convince you that at least two people joined together in a
5 common criminal scheme.

6 To establish a conspiracy, the Government isn't
7 required to prove that the conspirators sat around a table and
8 entered into a sound contract or wrote down their agreement
9 stating that they formed a conspiracy. Nor do they have to
10 set forth in any kind of document or oral agreement all the
11 details of the plans or the means by which the unlawful
12 project would be carried out or the part to be played by each
13 co-conspirator.

14 You may, of course, find the existence of an
15 agreement between two or more persons to engage in criminal
16 conduct that has been established by direct proof. But since
17 a conspiracy is, by its very nature, characterized by secrecy,
18 direct proof may not be available. You may, therefore, infer
19 the existence of a conspiracy from the circumstances of the
20 case and the conduct of the parties involved.

21 You may also consider the actions and statements of
22 all those you find to be participants as proof that a common
23 design existed to act together for the unlawful purpose stated
24 in the indictment. It's sufficient for the Government to show
25 that the conspirators somehow came to a mutual understanding

Charge of the Court

1436

1 to accomplish an unlawful act by means of a joint plan or
2 common scheme.

3 So, that's the first element.

4 The second element the Government must prove beyond
5 a reasonable doubt is that the Defendant knowingly and
6 intentionally became a member in the charged conspiracy. Now,
7 I already told you about what knowing and intentional means,
8 and you should apply those definitions here.

9 I do want to emphasize that merely because a person
10 is present at a place where criminal conduct is underway does
11 not make that person a member of the conspiracy to commit that
12 crime. Mere presence alone isn't sufficient. That's true
13 even if the person knows that a crime is being committed.
14 Mere knowledge or acquiescence in the unlawful plan without
15 participation is also not sufficient. Nor does the
16 Defendant's mere association with one or more members of the
17 conspiracy automatically make that defendant a member.

18 A person may know or be friendly with a criminal
19 without being a criminal himself. Similarly, the fact that a
20 person without any knowledge that a crime is being committed
21 merely happens to act in a way that furthers the purposes or
22 objectives of the conspiracy doesn't make that person a member
23 of the conspiracy. More is required under the law.

24 What's required is proof beyond a reasonable doubt
25 that the Defendant participated in the plan with knowledge of

Charge of the Court

1437

1 its objective and with the intent to help accomplish that
2 unlawful end. The key inquiry is simply whether the
3 Defendant, understanding the conspiracy's unlawful character,
4 intentionally assisted in it with the intention of aiding the
5 accomplishment of its unlawful purpose.

6 Now, for some kinds of conspiracy, there is a third
7 element. Most conspiracies have only the two that I've just
8 given you. One of the conspiracy charges in this indictment
9 does have that third element. I'll instruct you on that third
10 element when I get to that particular conspiracy charge.

11 Now, separate and apart from conspiracy, there is
12 what's called "aiding and abetting liability." In Counts
13 Three, Five, and Six, the indictment charges the Defendant not
14 only with committing the crimes but also with aiding and
15 abetting the commission of the crimes. When I instruct you on
16 those counts, as I will in a minute, I'll remind you that the
17 Defendant has been charged with aiding and abetting as well,
18 but I'll tell you what aiding and abetting means before we get
19 there.

20 There's two different kinds of aiding and abetting.
21 Let me go through each of them.

22 The Aiding and Abetting Statute in the United States
23 Code says that, quote, "Whoever commits an offense against the
24 United States or aids or abets or counsels, commands, or
25 induces, or procures its commission is punishable as a

Charge of the Court

1438

1 principal," close quote. That is, the principal who committed
2 the crime.

3 Under the statute, it's not necessary for the
4 Government to show that a defendant himself physically
5 committed the crime with which he's charged. A person who
6 aids or abets another to commit an offense is just as guilty
7 of that offense as if he committed it himself.

8 As you can see, the first requirement for aiding and
9 abetting liability is that you find that another person has
10 committed the crime charged. Obviously, you can't be
11 convicted of aiding and abetting a criminal act of somebody
12 else if the somebody else didn't commit any crime in the first
13 place. But if you do find that a crime was committed, then
14 you have to consider whether the Defendant, on trial here,
15 aided or abetted the commission of that crime.

16 To aid or abet somebody else to commit a crime, the
17 Defendant has to: First, willfully and knowingly associate
18 himself in some way with the crime; and, two, participate in
19 the crime by doing some act to help make the crime succeed.

20 In deciding whether the Government has established
21 that the Defendant willfully and knowingly associated himself
22 in some way with the crime, you have to follow my previous
23 instruction when I told you what knowingly and willfully mean.

24 To establish that the Defendant participated in the
25 commission of the crime by doing some act to help make the

Charge of the Court

1439

1 crime succeed, the Government has to prove that the Defendant
2 engaged in some affirmative conduct or some what we call
3 "overt act" -- that means a positive action -- for the
4 specific purpose of bringing about that crime. However, the
5 Government doesn't have to prove that the Defendant
6 participated in each and every element of that crime.

7 Again, the mere presence of a defendant where a
8 crime is being committed, even coupled with knowledge by the
9 defendant that a crime is being committed, or merely
10 associating with others who are committing a crime is not
11 sufficient to establish aiding and abetting.

12 Somebody who has no knowledge that a crime is being
13 committed or is about to be committed but inadvertently does
14 something that aids in the commission of that crime is not an
15 aider and abettor. An aider and abettor has to know that the
16 crime is being committed and act in a way that is intended to
17 bring about the success of that criminal venture.

18 To determine whether a Defendant aided or abetted
19 the commission of the crime with which he's charged, ask
20 yourselves these questions:

21 Did he participate in the crime charged as something
22 he wished to bring about?

23 Did he knowingly associate himself with the criminal
24 venture?

25 Did he seek by his actions to make the criminal

Charge of the Court

1440

1 venture succeed?

2 If he did, then the Defendant is an aider and
3 abettor and, therefore, guilty of the offense just as if he
4 had done the thing himself. If, on the other hand, your
5 answer to any one of these questions is no, then the Defendant
6 is not an aider and abettor and you have to find him not
7 guilty.

8 Now, the second type of aiding and abetting is under
9 Section 2(b) of the statute, and it says, quote, "Whoever
10 willfully causes an act to be done, which, if directly
11 performed by him, would be an offense, a crime, against the
12 United States, is punishable as a principal," close quote.

13 So, what does the term "willfully cause" mean? It
14 doesn't mean that the Defendant himself must have physically
15 committed the crime or supervised or participated in the
16 actual criminal conduct charged in the indictment. If he did
17 that, he'd be liable as a principal and we wouldn't be worried
18 about aider and abettor liability.

19 Rather, the meaning of the term "willfully cause"
20 can be found in the answers to the following questions: Did
21 Defendant intend the crime to occur?

22 Did the Defendant intentionally cause another person
23 to commit the crime charged?

24 If you're persuaded beyond a reasonable doubt that
25 the answer to both of these questions is yes, then the

Charge of the Court

1441

1 Defendant is guilty of the crime charged just as if he,
2 himself, had actually committed it. If, on the other hand,
3 your answer to any of these questions is no, then you must
4 find him not guilty as an aider and abettor.

5 All right. Now let me go through each one of the
6 counts that's in the indictment, and I'll tell you what they
7 mean.

8 Count One of the indictment charges the Defendant
9 with conspiracy -- so you know it's a conspiracy count -- to
10 unlawfully produce identification documents. The indictment
11 reads as follows:

12 In or about and between November 2018 and April 18,
13 2019, approximate dates, within the Eastern District of New
14 York and elsewhere, the Defendant Narzikulov, together with
15 others, did knowingly and intentionally attempt and conspire
16 to produce identification documents; that is, commercial
17 driver's licenses and Taxi & Limousine Commission licenses,
18 knowing that such documents were produced without lawful
19 authority, in a manner in and affecting interstate and foreign
20 commerce, and transported in the mail in the course of their
21 production and transfer.

22 Now, this count charges the Defendant with violating
23 two sections of Title 18 of the U.S. Code. The first, section
24 1028(a)(1) provides that: Whoever knowingly and without
25 lawful authority produces an identification document shall be

Charge of the Court

1442

1 guilty of a crime.

2 The second section, 1028(f) provides that: Any
3 person who attempts to conspire or conspires to commit any
4 offense under this section shall be guilty of a crime.

5 Now, I've already instructed you on conspiracy and
6 what that is, and you should apply those instructions in
7 considering that charge.

8 The object of the conspiracy charged in this count
9 is to unlawfully produce identification documents. I'm now
10 going to tell you what the elements of that substantive crime
11 are, producing identification documents.

12 To prove a defendant guilty of this offense, the
13 Government has to establish beyond a reasonable doubt: First,
14 that the document described in the indictment is an
15 identification document; second, that the Defendant knowingly
16 and intentionally produced or knowingly and intentionally
17 attempted to produce or knowingly and intentionally caused the
18 document in question to be produced; third, that the Defendant
19 produced that document knowingly and without lawful authority;
20 and, fourth, that the Defendant's conduct was in or affecting
21 interstate commerce or that the fake identification document
22 was transported in the United States mail.

23 Let me go over those one at a time.

24 First, what's an "identification document"? The
25 term identification document means a document made or issued

Charge of the Court

1443

1 by or under the authority of the United States Government or a
2 state or a local government or even a foreign government that,
3 when completed with information concerning a particular
4 individual, is of a type intended or commonly accepted for the
5 purpose of identifying individuals. A document is of a type
6 intended or commonly accepted for the purpose of
7 identification of individuals if it's regularly used or
8 accepted to identify the bearer as himself or herself.

9 The second element that the Government has to prove
10 beyond a reasonable doubt is that the Defendant knowingly and
11 intentionally produced or knowingly and intentionally
12 attempted to produce or knowingly and intentionally caused the
13 documents in question to be produced.

14 Again, I told you what knowingly and intentionally
15 means. To produce a document means to make it, manufacture
16 it, issue it, publish it, alter it, authenticate it, or
17 assemble it. A document may be caused to be produced through
18 a fraud on the agency that produces the documents.

19 The third element that the Government has to prove
20 beyond a reasonable doubt is that the Defendant lacked lawful
21 authority to produce the document and that he did that
22 knowingly. I've already told you what knowingly means.
23 "Lawful authority" means someone given the authority to
24 manufacture, prepare, or issue identification documents either
25 by some law or by a contract with the Government.

Charge of the Court

1444

1 To prove this element, then, the Government has to
2 prove that the Defendant was not authorized to produce the
3 document described in the indictment.

4 And then the fourth element of this Count One is
5 affecting interstate commerce. Again, it has to be proved
6 beyond a reasonable doubt and it has to be proved that the
7 document was produced in or affecting interstate commerce or
8 that it was mailed through the United States mails.

9 "Interstate commerce" simply means the movement of
10 goods, services, money, and individuals between any two or
11 more states or between one state and the District of Columbia.
12 So, walking across the state line from New York to New Jersey,
13 that's interstate commerce.

14 To satisfy this element, the Government must prove
15 that the Defendant's conduct affected interstate commerce in
16 any way, no matter how minimal. You don't have to find that
17 Defendant's conduct actually affected interstate commerce if
18 you find that the Defendant's conduct would have affected
19 interstate commerce if the Defendant had successfully and
20 fully completed his actions.

21 Also, it's not necessary that each document
22 separately affect interstate commerce as long as you find that
23 the Defendant's conduct in producing the documents actually or
24 potentially affected interstate commerce in some way.

25 Finally, the Government isn't required to prove that

Charge of the Court

1445

1 the Defendant knew he was affecting interstate commerce.

2 "Transported in the United States mail" means that
3 the identification document was dropped in the mail for
4 delivery by the Postal Service. The Government doesn't have
5 to prove that the Defendant knew that the identification
6 document in question were or would have been transported to
7 the United States.

8 Now, Counts Two and Three, let me do those two
9 together, Two and Three.

10 Count Two charges the Defendant with conspiracy to
11 commit kidnapping and Count Three charges the Defendant with
12 what I've told you is called the substantive crime of
13 kidnapping. Just because the elements follow in a better
14 logical order, I'm going to tell you about Count Three first
15 and then I'll circle back to Count Two.

16 Count Three says that on or about March 28, 2019,
17 within the Eastern District of New York, the Defendant
18 Narzikulov, together with others, did knowingly, intentionally
19 an unlawfully seize, confine, inveigle, decoy, kidnap, abduct,
20 and carry away and hold for ransom and reward and otherwise a
21 person; to wit, Firdavs Giyasov, and use one or more means,
22 facilities, and instrumentalities of interstate and foreign
23 commerce; that is, cell phones and a bank transaction, in
24 committing and in furtherance of the commission of the
25 offense.

Charge of the Court

1446

1 This count charges the Defendant with the violating
2 Section 1201(a)(1) of the United States Criminal Code. That
3 section says that: Whoever unlawfully seizes, confines,
4 inveigles, decoys, kidnaps, abducts, or carries away and holds
5 for ransom or reward or otherwise any person, except in the
6 case of a minor by a parent, when the person is willfully
7 transported in the interstate or foreign commerce, regardless
8 of whether the person was alive at the time, or the offender
9 travels in interstate or foreign commerce or uses the mail or
10 any means, facility, or instrumentality of interstate or
11 foreign commerce in committing or in furtherance of the
12 commission of the offense.

13 In order to prove the Defendant guilty of the crime
14 of kidnapping, the Government has to prove each of the
15 following elements beyond a reasonable doubt. For
16 convenience, I'm going to refer Firdavs Giyasov as simply
17 "Giyasov."

18 First, that the Defendant seized, confined,
19 inveigled, decoyed, kidnapped, abducted, or carried away
20 Giyasov; second, that the Defendant held Giyasov for ransom
21 reward or any other reason; third, that Giyasov was
22 transported in interstate or foreign commerce, that the
23 Defendant traveled in interstate or foreign commerce, or that
24 the Defendant used the mail or any means, facility, or
25 instrumentality of interstate or foreign commerce in

Charge of the Court

1447

1 committing or in furtherance of the commission of the offense;
2 and, fourth, that the Defendant acted unlawfully, knowingly,
3 and willfully. Let me go over those one at a time.

4 First, the Government has to prove beyond a
5 reasonable doubt that the Defendant seized, confined,
6 inveigled, decoyed, kidnapped, abducted, or carried away
7 Giyasov.

8 "Kidnapped" means to take and carry away a person by
9 force or against his will. "Seize, confine", "abduct," and
10 "carry away" all mean the physical or bodily taking and
11 carrying away of a person or the holding or restriction of
12 someone by force without that person's consent.

13 The second element that the Government has to prove
14 beyond a reasonable doubt is that the Defendant held Giyasov
15 for ransom, reward, or some other reason. It's sufficient for
16 the Government to prove that the reason that the Defendant
17 held Giyasov was for monetary reward or financial gain;
18 however, the Government doesn't have to prove that's the
19 reason for monetary reward or financial gain if the Government
20 proves that it was for some other purpose that the Defendant
21 consider sufficient to benefit him.

22 The third element that the Government has to prove
23 beyond a reasonable doubt is that Giyasov was transported in
24 interstate or foreign commerce or that the Defendant used the
25 mail in committing or in furtherance of the commission of the

Charge of the Court

1448

1 offense. Again, "interstate commerce" simply means traveling
2 across a state line.

3 In order to satisfy this element, the Government
4 need not show that the Defendant actually did the transporting
5 of Giasov, nor need the Government show that the Defendant
6 knowingly crossed state lines while transporting Giasov.
7 It's sufficient to satisfy this element if the Government
8 proves that Giasov was transported or was moved from one
9 state to another and that the Defendant caused the interstate
10 transportation to occur.

11 The Government may satisfy this element by proving
12 beyond a reasonable doubt that the Defendant used the
13 United States mail or any means, facility, or instrumentality
14 of interstate or foreign commerce in committing or in
15 furtherance of this offense.

16
17 (Continued on the following page.)
18
19
20
21
22
23
24
25

Jury Charge

1449

1 THE COURT: The term means facility, or
2 instrumentality of interstate or foreign commerce includes the
3 use of a telephone or the internet in furtherance of the
4 commission of the offense.

5 And then the fourth element of this kidnapping
6 charge is that the Government must prove beyond a reasonable
7 doubt that the defendant acted unlawfully, knowingly, and
8 willfully. Unlawfully simply means contrary to the law. I've
9 already told you what knowingly and willfully mean.

10 In order to satisfy this element, the Government has
11 to show that the defendant knew that Giasov was not
12 accompanying him voluntarily but rather was forced, cored or
13 tricked into coming along.

14 Now, the defendant is also charged with aiding and
15 abetting in this Count Three. The instruction that is I gave
16 on aiding and abetting therefore apply to this count.

17 Now, Count Two, circling back is conspiracy to
18 commit kidnapping. I just told you what kidnapping is in
19 Count Three of the substantive count. Now, I want to tell you
20 about conspiracy to commit kidnapping.

21 In Count Two, the indictment reads: On or about
22 March 28, 2019, within the Eastern District of New York the
23 defendant Narzikulov, together with others, did knowingly,
24 intentionally, and unlawfully conspire to seize, confine,
25 inveigle, decoy, kidnapping, abducted, and carry away and hold

Jury Charge

1450

1 for ransom and reward and otherwise an attorney to wit:
2 Giyasov and to use one or more means, facilities, and
3 instrumentalities of interstate and foreign commerce to wit:
4 Cell phones and a bank transaction in committing and in
5 furtherance of the crime.

6 Give me just a second, please.

7 This count charges the defendant with violating
8 §1201(c) of Title 18 of the U.S. Criminal Code. That sections
9 provides if two or more people conspire to violate this
10 section and one or more of such persons to my overt acts to
11 affect the object of the conspiracy, each shall be guilty of a
12 crime.

13 Kidnapping is a violation of this section as I've
14 already instructed you on Count Three before I circled back to
15 this Count Two.

16 This is the conspiracy charge that has three
17 elements to it rather than the usual two elements to a
18 conspiracy charge. To prove the defendant guilty of
19 conspiracy to commit kidnapping, the Government has to prove
20 each of following elements beyond a reasonable doubt.

21 The first two are from the general crime of
22 conspiracy, that is, first that two or more persons entered
23 into the particular unlawful agreement charged in the count.

24 And second, that the defendant knowingly and
25 willfully became a member of the conspiracy.

Jury Charge

1451

1 And then the third element for this conspiracy is
2 that one or more members of the conspiracy did any overt act
3 to affect the object of the conspiracy.

4 Now, when I first talked to you about conspiracy. I
5 told you the law for the first two elements here and you
6 should follow those instructions in this count when you
7 consider those two elements.

8 The object of this conspiracy is kidnapping.

9 Now, this count also has a third element that one or
10 more of the members of the conspiracy had to do some overt act
11 to affect the object of a conspiracy. Let me tell you what an
12 overt act means. It is any action intended to help achieve
13 the goals of the conspiracy. The indictment alleges that the
14 following overt acts were committed in the Eastern District of
15 New York.

16 There's A through F.

17 First, on or about March 28, 2019, the defendant
18 Sukhrob Kamolov forcibly removed Giyasov from an apartment.
19 Then, on or about March 28, 2019, Sukhrob used a device to
20 apply one or more electric shocks to Giyasov in the presence
21 of the defendant.

22 On or about March 28, 2019, the defendant and
23 Sukhrob forcibly dragged Giyasov to a vehicle where Sherzod
24 Mukumov was waiting.

25 On or about March 28, 2019, the defendant and

Jury Charge

1452

1 Sukhrob drove Giyasov to a Bank of America branch located in
2 Brooklyn.

3 On or about March 28, 2019, the defendant and
4 Sukhrob drove Giyasov to a Pay-O-Matic check-cashing store
5 located in Brooklyn.

6 And on or about March 28th, the defendant took
7 possession of a Bank of America debit card and other
8 identification documents in the name of Giyasov.

9 Now, the Government isn't required to prove all of
10 those acts, or that any particular overt act was committed at
11 precisely the time alleged in the indictment. Nor must you
12 find that the defendant personally committed any of these
13 overt acts.

14 Rather, the Government has to prove that at least
15 one overt act was knowingly and willfully committed by at
16 least one co-conspirator in furtherance of some object or
17 purpose of the conspiracy.

18 The act itself need not be, although it can be, but
19 it need not be criminal in nature if considered separately and
20 apart from the conspiracy. However, it has to be an act that
21 further or lends to the accomplishment of plan or scheme.

22 Finally, you have to find either that the agreement
23 was formed or that one of these overt acts was committed in
24 this judicial district where we all are for this trial, the
25 Eastern District of New York.

Jury Charge

1453

1 The Eastern District of New York means Brooklyn,
2 Queens, Staten Island, and all of Long Island, Nassau and
3 Suffolk County.

4 Next, we have Count Five.

5 Again, I'm going to take Counts Four and Five
6 together, but I'm going to tell you Count Five first because
7 that's the substantive count and it's a little easier to
8 present that way.

9 Count Four is the conspiracy count. Count Five is
10 an extortion count.

11 Count Five says as follows:

12 On or about and between March 28, 2019, and
13 April 18, 2019, approximate dates, within the Eastern District
14 and elsewhere, Narzikulov together with others, did knowingly
15 and intentionally delay and affect commerce and the movement
16 of articles and commodities in commerce by extortion. And
17 that the defendant obtained property, that is, a check in
18 U.S. currency from Giyasov with his consent which consent was
19 induced through wrongful use of actual and threatened force,
20 violence, and fear.

21 This count charges the defendant with violating
22 Section 1951 of the Criminal Code. This is what we call this
23 provision of the law is called "The Hobbs Act." The section
24 provides in relevant part that whoever in any way or degree
25 obstruct, delays, or affects commerce or the movement of an

Jury Charge

1454

1 article or commodity in commerce by extortion, commits a
2 crime.

3 What does extortion mean? Extortion is the
4 obtaining of another person's property or money with his
5 consent but when their consent is induced or brought upon
6 through the use or threatened use of force, violence, or fear.

7 In order to meet its burden of proving that the
8 defendant committed extortion, the Government has to establish
9 beyond a reasonable doubt each of the following elements.

10 First, that the defendant wrongfully obtained the
11 property of another.

12 Second that the defendant obtained this property
13 with the victim's consent, but that his consent was compelled
14 by the wrongful use or threat of force, violence, fear of
15 physical injury or fear of economic harm whether immediate or
16 to occur in the future.

17 Third, that the defendant acted knowingly and
18 intentionally.

19 And fourth, that as a result of the defendant's
20 actions, interstate commerce, or an item moving in interstate
21 commerce was delayed, obstructed, or affected in any way or
22 degree.

23 So let me go through each of those four elements.

24 First, personal property. That is the defendant
25 wrongfully obtained or took personal property of another or

Jury Charge

1455

1 from the presence of another.

2 Property includes money and other tangible and
3 intangible things of value that are capable of being given
4 from one person to another. It doesn't matter if the victim's
5 initial acquisition of the property was illegal, or if the
6 business in which the victim was engaged in illegal. This is
7 focused on the movement of the property itself.

8 The second element is the obtaining of property
9 through the wrongful use of force, violence, or fear.

10 Again, this is where property is used with the
11 victim's consent or obtained with the victim's consent, but
12 that consent is improperly gained by using threat of force,
13 violence, fear of physical injury or fear of economic harm now
14 or in the future.

15 This element is satisfied in any one of those
16 methods is used.

17 In considering whether the defendant used or
18 threatened to use force, violence, or fear you should give
19 those words their common and ordinary meaning and understand
20 them as you normally would. There's no special legal
21 definition to those terms.

22 The use or threat of violence does not have to be
23 directed at the person whose property was taken. The use or
24 threat of force or violence might be aimed at third person or
25 causing economic rather than physical injury. A threat can be

Jury Charge

1456

1 made verbally or by a physical gesture.

2 Whether a statement or a physical gesture by the
3 defendant actually was a threat depends on the surrounding
4 facts.

5 Now, I just used the term "fear." The wrongful use
6 of fear includes creating or instilling in the victim fear of
7 physical injury or fear of economic harm. Fear exists if the
8 victim experienced anxiety, concern, or worry over some
9 expected physical and economic harm that's reasonable under
10 the circumstances.

11 Fear of economic harm to the victim is only wrongful
12 when it's used to obtain property to which the defendant has
13 no lawful right to obtain. The existence of fear has to be
14 determined by the facts as they existed at the time of the
15 defendant's conduct.

16 Any fear created or exploited in the course of an
17 extortion has to be a reasonable fear. The fear of economic
18 loss also has to be a reasonable fear. Reasonable fear means
19 that a reasonable person in the defendant's position would
20 experience similar fear.

21 The essence of crime of extortion is the defendant's
22 knowing and willful attempt to use fear wrongfully. What the
23 law prohibits is knowingly and willfully attempting to
24 create or instill fear wrongfully or knowingly and willfully
25 attempting to use or exploit existing fear wrongfully when

Jury Charge

1457

1 that's done with a specific purpose of inducing somebody to
2 part with their property.

3 A defendant need only attempt to wrongfully exploit
4 fear to be guilty of extortion. He need not attempt nor
5 create it. However, although the victim's fear of harm or
6 loss need not be instilled by the defendant, there still has
7 to be proof that the defendant away of the victim's fear did
8 or said something in an attempt to wrongfully exploit that
9 fear.

10 In making your decision whether the defendant used
11 or threatens force violence fear or fear of economic harm
12 whether now in the future. You have to make a decision about
13 the victim state of mind at the time of the defendant's
14 actions. It's impossible to look into another person's mind
15 to determine what its state was, right? We can't see through
16 people's heads and see what the wheels are turning around and
17 doing.

18 After careful consideration of all of the evidence,
19 all the surrounding facts and circumstances may enable you to
20 decide whether fear would reasonably have been the alleged
21 victim state of mind. Looking at the situation, the actions
22 of the people involved including the alleged victim may help
23 you decide what his state of mind was.

24 In other words, you must consider -- you may
25 consider circumstantial evidence in deciding whether the

Jury Charge

1458

1 defendant used or threatened physical force, violence, or fear
2 to obtain property.

3 You may have also consider the relationship between
4 the defendant and the victim in deciding whether fear exists.
5 Fear may be present even if confrontations between the victim
6 and the alleged extorter appear friendly.

7 The third element that the Government has to prove
8 beyond a reasonable doubt is that the defendant acted
9 knowingly and intentionally. Again, I've already told you
10 what that means and you should apply those instructions here.

11 The fourth element that the Government has to prove
12 beyond a reasonable doubt is that interstate commerce or an
13 item moving in it was delayed, obstructed, or affected in some
14 way by the defendant's actions. Again, I've told what you
15 interstate commerce means, you should apply that definition
16 here.

17 If you decide that the defendant sought to obtain
18 another's property without his consent by the use or threat of
19 force, violence, or fear, then you have to decide whether this
20 act would affect interstate commerce in any way or degree.
21 You have to determine whether there is an actual or potential
22 effect on interstate commerce between any two or more states.

23 If you decide that there was any affect at all on
24 interstate commerce that's enough to satisfy this element.

25 The affect on interstate commerce can be minimal.

Jury Charge

1459

1 Doesn't need to be a direct affect and it doesn't need to be
2 immediate. I instruct you that under the law, depleting
3 assets from a person that would have been used to buy items
4 that moved or traveled in interstate or foreign commerce
5 that's a should have affect on interstate commerce to satisfy
6 this element.

7 Furthermore, the defendant need not have intended or
8 anticipated an affect on interstate or foreign commerce. The
9 commerce affected need not have been lawful. Activities
10 affecting unlawful interstate commerce fall within the purview
11 of the statute.

12 If you decide that interstate commerce would
13 potentially or probably be affected if the defendant had
14 successfully and fully completed his actions, then the element
15 is satisfied. I do not have to find that interstate commerce
16 was actually affected. However, if the defendant has finished
17 his actions and done all he intended to do, and you determine
18 that there has been no affect on interstate commerce, then you
19 can't find him guilty of the you don't need to decide whether
20 the affect on interstate commerce was harmful or beneficial to
21 a particular business or commerce in general.

22 Okay. This crime also has an aiding and abetting
23 charge as part of it. The instructions I give you on aiding
24 and abetting also applies to this count, that is, Count Five.

25 Count Four of the indictment charge the defendant

Jury Charge

1460

1 with conspiring to commit extortion this is the conspiracy
2 count for substantive extortion count.

3 Count Four reads, on or about March 28, 2019, and
4 April 18, 2019, approximate dates, within the Eastern District
5 of New York, Narzikulov, together with others did knowingly
6 and intentionally conspire to obstruct, delay, and affect
7 commerce and the movement of articles and commodities in
8 commerce by extortion in that the defendant and other agreed
9 to obtain property that is a check and U.S. currency from
10 Giyasov with his consent, which consent was to be induced
11 through wrongful use of actually is and threatened force,
12 violence, and fear.

13 I've already instructed you on conspiracy and you
14 should apply those instructions in considering this charge.
15 For this count, the object of the charged conspiracy was to
16 commit the crime of extortion. I've also instructed you on
17 the elements of extortion and the count I just and so you
18 should apply those instructions here as well.

19 Then we go to Count Six.

20 Count Six charges the defendant with committing or
21 threatening physical violence against Kamolov in furtherance
22 of a plan to obstruct, delay, or affect commerce by extortion.
23 It says that on March 28, 2019, within the Eastern District,
24 Narzikulov, together with others did knowingly and
25 intentionally threaten physical violence to Kamolov in

Jury Charge

1461

1 furtherance of a plan and purpose to obstruct, delay, and
2 affect commerce and the movement of articles and commodities
3 in commerce by extortion, that is, a plan and purpose to
4 obtain U.S. currency from Giyasov with his consent, which
5 consent was induced through wrongful use of actual and
6 threatened force, violence, and fear.

7 This count charges the defendants with violating
8 Section 1951 of the Criminal Code. That section states that
9 whoever in any way obstructs, delays, or affects commerce or
10 the movement of an article or commodity in commerce by
11 extortion or attempts or conspires to do so, or commits or
12 threatens physical violence to any person or property in
13 furtherance of a plan to do anything in violation of this
14 section will be deemed to have committed a crime.

15 To prove the defendant guilty of this crime, the
16 Government has to prove each of the following elements beyond
17 a reasonable doubt.

18 First, that the defendant committed or threatened
19 physical violence.

20 Second, that the committed or threatened physical
21 violence, furthered a plan or purpose to engage in extortion.

22 And third, that the extortionate plan, if
23 successful, would have in some way or degree delayed,
24 obstructed, or affected interstate or foreign commerce.

25 Let me go over those one at time, although I think

Jury Charge

1462

1 for port you would have these kinds of ideas before.

2 The first element that the Government must prove
3 beyond a reasonable doubt is that the defendant committed or
4 threatened physical violence.

5 Again, physical violence isn't a term of art, it's
6 what its ordinary meaning has and you should interpret those
7 words the way you usually would.

8 The second element that the Government has to prove
9 beyond a reasonable doubt is that the committed or threatened
10 physical violence furthered a plan to engage in extortion.
11 I've already told you about what extortion is and you should
12 follow that instruction here.

13 I remind, however, that Count Six does not allege
14 that extortion was actually committed and the Government
15 doesn't need to prove that the extortion was successful.
16 Rather, Count Six charges the defendant with committing or
17 threatening physical violence against Kamolov in furtherance
18 of a plan to extortion U.S. currency from Giyasov.

19 And then element three is the interstate commerce
20 component which I again have already instructed you on.

21 I don't think I need to go through that again. Do
22 either of the lawyers think I need to?

23 MR. GUADAGNINO: No, your Honor.

24 MS. NGUYEN: No, your Honor.

25 THE COURT: Okay.

Jury Charge

1463

1 Okay. This count also has an aiding and abetting
2 theory lined to. This Count Six so the aiding and abetting
3 theory applies to this count.

4 And then Count Seven is using, carrying, and
5 possessing a firearm to commit a crime of violence. Count
6 Seven charges as follows.

7 On or about March 28, 2019, went Eastern District of
8 New York, Narzikulov together with others did knowingly and
9 intentionally use and carry one or more firearms during and in
10 relation to a crime of violence, that is, the crime charged in
11 Count Six.

12 And it knowingly and intentionally possessed those
13 firearms in furtherance of said crime of violence one or more
14 of which firearms were brandished and I'll explain all that to
15 you.

16 That comes from Section 924(c) of the Criminal Code
17 and that section provides that any person who during, and in
18 relation to, any crime of violence for which the person may be
19 prosecuted in a court of the United States uses or carries a
20 firearm, or who in furtherance of any such crime possessed a
21 firearm shall be guilty of this crime.

22 To prove the defendant guilty of this crime, the
23 Government must prove each of following elements beyond a
24 reasonable doubt.

25 First, that the defendant committed a crime of

Jury Charge

1464

1 violence for which he might be prosecuted in a court of the
2 United States.

3 Second, that the defendant knowingly and
4 intentionally used or carried a firearm during, and in
5 relation to, the commission of or knowingly and intentionally
6 possessed a firearm in furtherance of the crime of violence
7 for which he might be prosecuted in any United States court.

8 Now, I'll address each of those elements
9 individually. It.

10 The first element that the Government has to prove
11 beyond a reasonable doubt is that the defendant committed a
12 crime of violence for which he might be prosecuted in a court
13 of the United States.

14 The defendant is charged in Count Six of the
15 indictment with committing the crime of threatening physical
16 violence in furtherance of a plan to obstruct, declaration
17 or affect interstate commerce by the use of extortion.

18 I instruct you that this is a crime of violence.
19 However, it's for you to determine that the Government has
20 proven beyond a reasonable doubt that the defendant committed
21 the crime charged in Count Six. If, upon all of the evidence,
22 you find that the Government has failed to prove Count Six
23 beyond a reasonable doubt, then you will proceed no further.

24 In other words, if you don't find the defendant
25 guilty on Count Six, if you acquit him on that count, then you

Jury Charge

1465

1 also have to acquit him on Count Seven. Count Seven is
2 dependent on Count Six.

3 If, on the other hand, you find that the Government
4 has proven Count Six beyond a reasonable doubt then the
5 Government has also proven this first element of Count Seven.

6 The second element that the Government has to prove
7 beyond a reasonable doubt is that the defendant used or
8 knowingly carried a firearm during, and in relation to, or
9 knowingly possessed a firearm in furtherance of the commission
10 of the crime charged in Count Six.

11 A firearm is any weapon that will or is designed to
12 or may be readily converted to expel a projectile by the
13 action of an explosive.

14 To satisfy that element, you must find that the
15 defendant carried, used or possessed the firearm knowingly and
16 intentionally. I've already instructed you on the terms
17 knowingly and intentionally and you have to follow those
18 instructions are.

19 In this context, it means that the defendant carried
20 the firearm purposefully and voluntarily, not by accident or
21 mistake. It also means that the defendant knew the weapon was
22 a firearm. However, the Government is not required to prove
23 that the defendant knew he was breaking the law. The terms
24 "used," "carried," and "possessed" are differently defined in
25 the law.

Jury Charge

1466

1 The Government has to prove that the defendant did
2 at least one of these actions but doesn't have to prove that
3 he did all three.

4 To prove that the defendant used the firearm, the
5 Government must prove an active employment of the firearm by
6 the defendant during and in relation to the commission of the
7 crime in Count Six. That doesn't mean that the defendant must
8 actually fire or attempt to fire the weapon, although those
9 would obviously constitute use of the weapon, brandishing
10 displaying, or even referring to the weapon so that others
11 present knew that the defendant had the firearm available if
12 needed, those are all use of the firearm the way it's defined
13 in the statute.

14 However, merely possessing or storing a firearm at
15 or near the site of the crime out active employment of it as I
16 just described it to you is not sufficient to constitute use
17 of the firearm.

18 To prove that the defendant carried the firearm, the
19 Government has to prove that the defendant had the weapon
20 within his control in such a way that it furthered the
21 commission of the crime or was an integrate part of the
22 commission of the crime. The defendant did not necessarily
23 have to hold the firearm physically, that is, have actual
24 possession of it on his person. If you find that the
25 defendant had dominion and control over the place where the

Jury Charge

1467

1 firearm was located, and had the power and intention to
2 exercise control over the firearm in such a way, that is,
3 furthered the commission of the crime of violence you may find
4 that the Government has proven that the defendant carried the
5 weapon.

6 If you find that the defendant used or carried the
7 weapon, you must also then consider whether the firearm was
8 used or carried during, and in relation to, the commission of
9 the crime of violence. It prove that the firearm was used or
10 carried during, and in relation to, the commission of the
11 crime of violence, the Government has to prove that the
12 firearm was an integral part of the commission of the crime,
13 and that it furthered or facilitated the crime.

14 It's not sufficient if the carrying was inadvertent,
15 coincidental or for some purpose other than furthering or
16 facilitating the crime.

17 Finally, to prove the defendant possessed the
18 firearm in furtherance of the crime, the Government has to
19 prove that the defendant had possession of the firearm and
20 that such possession was in furtherance of the crime.

21 Possession means that the defendant either had
22 physical possession of the firearm on his person, or that he
23 had physical control and dominion over the place where the
24 firearm was located and that he had the power and intention to
25 exercise control over the firearm.

Jury Charge

1468

1 To possess a firearm in furtherance of crime means
2 that the firearm helped forward, advance, or promote
3 commission of the crime. The mere possession of the firearm
4 at the scene of the crime is not sufficient. The firearm must
5 have played some part in furthering the crime in order for
6 this element to be satisfied.

7 Now, if you find that the Government has proven that
8 the defendant committed the crime charged in this count, or
9 that he had aided and abetted the crime charged in this count,
10 then you will be further asked to determine whether the
11 firearm in question was brandished during the commission of
12 the underlying crime of violence.

13 The term "brandished" means to display all or part
14 of the firearm or otherwise make the presence of the firearm
15 known to the person in order to intimidate that person
16 regardless of whether the firearm is directly visible to that
17 person.

18 And then finally, we have Count Eight, conspiracy to
19 tamper with witnesses. The indictment says that between April
20 2019 through December 2019, approximate dates, Narzikulov,
21 together with others, did knowingly and intentionally conspire
22 to use intimidation, threaten and corruptly persuade one or
23 more persons with intent to influence, delay, and prevent the
24 testimony of one or more persons in an official proceeding are
25 that is a criminal trial against Narzikulov contrary to the

Jury Charge

1469

1 U.S. Code. That he used and induced one or more persons to
2 withhold testimony from an official proceeding, also a
3 criminal trial against him, and that he use caused and induce
4 one or more persons to evade legal process summoning such
5 persons to appear as witnesses and to produce one or more
6 records, documents, and other things in an official
7 proceeding, again, with relation to his trial.

8 The relevant statute on this subject is
9 Section 1512(b) of the Criminal Code and that says, whoever
10 knowingly uses intimidation, threats, or corruptly persuades
11 another person or attempt to do so, or engages in misleading
12 conduct toward another person in an attempt to influence,
13 delay, or prevent the testimony of any person in an official
14 proceeding, or cause or induce any person to withhold
15 testimony, or withhold a record, document, or other object
16 from an official proceeding; or evade legal process summoning
17 that person to appear as a witness or produce a record,
18 document, or other object in an official proceeding shall be
19 guilty of a crime.

20 Now, I've already told you about the law that
21 applies to conspiracies, and you should apply those
22 instructions here. For this count, the object of the
23 conspiracy was to tamper with witnesses. I'll tell you about
24 each element of that.

25 The Government first has to prove beyond a

Jury Charge

1470

1 reasonable doubt, and on the date charged, the defendant
2 knowingly used intimidation, threatened, or corruptly
3 persuaded one or more persons. And, second, that the
4 defendant acted knowingly and with the intent to influence,
5 delay, or prevent the testimony of one or more persons in an
6 official proceeding or to cause one or more persons to
7 withhold testimony in an official proceeding or evade legal
8 process summoning that person to appear in a proceeding, or to
9 produce a second document or other object in an official
10 proceeding.

11 Let me explain those in more detail.

12 The first element that the Government has to prove
13 beyond a reasonable doubt is that the defendant knowingly used
14 intimidation threatened or corruptly persuaded one or more
15 persons. Intimidation includes frightening somebody,
16 inspiring or affecting that person by fear, or deterring him
17 by threats. It doesn't matter whether or not the person
18 alleged to be the object of the threat is actually frightened
19 or thinks he is in physical danger. It's enough that the
20 threat had a reasonable tendency to make the person fearful.
21 A threat is simply expression of an intention to do harm. A
22 threat maybe communicated by words as well as gestures.

23 To find that the defendant used threats, you need
24 not find that he intended to carry out the threat. The real
25 issue is whether the words allegedly used were, in fact,

Jury Charge

1471

1 uttered by him and expressed an intention to harm.

2 To corruptly persuade means to act knowingly with a
3 wrong or evil purpose to convince or induce another person to
4 engage in certain conduct.

5 Then the second element that the Government has to
6 prove beyond a reasonable doubt is that the defendant acted
7 knowingly and with the intent to influence, delay, or prevent
8 the testimony of one or more persons in an official
9 proceeding, or to cause or induce one or more persons to
10 withhold testimony in that proceeding or evade legal process
11 summoning that person to appear as a witness or to produce a
12 record, document, or other object in an official proceeding.

13 To act with the intent to influence the testimony of
14 a witness means to act for the purpose of getting that witness
15 to change or color or shade the witness's testimony in some
16 way. It's not necessary for the Government to prove that the
17 witness testimony was, in fact, changed in any way. An
18 official proceeding means a proceeding before a court, judge,
19 or federal agency. The proceeding may be civil or criminal.
20 I'm instructing you that the criminal trial against the
21 defendant here is an official federal proceeding.

22 And that completes the substantive charge.

23 So those are the counts in the indictment, ladies
24 and gentlemen, I have just a couple of words for you and then
25 I'm going to send you in for deliberations.

Jury Charge

1472

1 Nobody on the jury during your deliberations should
2 attempt to communicate with me or with any court personnel by
3 any means other than a writing signed by your foreperson.
4 Therefore, the first thing you have to do when you retire is
5 pick a foreperson. I will tell you don't spend a lot of time
6 doing it. There's no more money attached to the job. It's
7 just you serve as a conduit for communications with the
8 Government Court. The foreperson will sign all notes to the
9 Court and hand them to the marshal who will be standing
10 outside your door for me to read. Once I have your note, I'll
11 bring you back in the courtroom so that we can speak in person
12 or if there is some exhibit you want to see, I might send it
13 into the jury room.

14 If you send out any notes, under no circumstances
15 should you tell me or anybody else how you stand numerically
16 on the issue of the defendant's guilt even in open court if I
17 bring you back here until a unanimous verdict has been
18 reached. Don't give us any splits until you reach a unanimous
19 verdict.

20 Now, most of the exhibits, maybe even all of the
21 exhibits, we're going to send back to you in the jury room.
22 But if you're missing something that you want to see, then
23 send out a note requesting that.

24 In addition, we can have portions of the trial
25 testimony read back to you or tape recordings or video

Jury Charge

1473

1 recordings played again for you. However, it can take us more
2 than a few minutes to find the part that you are looking for,
3 so be as specific as you can be when you refer or request some
4 testimony or exhibits. Tell us exactly what it is you want
5 from what witness, what their name was what it's about and
6 that will help us find it faster and get it to you.

7 The purpose of jury deliberations to discuss and
8 consider the evidence, to listen to the arguments of your
9 fellow jurors, to present your individual views, to consult
10 with one another, and to reach an agreement based on the
11 evidence presented if you can do so without violence to your
12 own individual judgment. You shouldn't hesitate to change
13 your opinion if, after discussion with your fellow jurors,
14 your opinion seems wrong.

15 If, however, after you have carefully considered all
16 the evidence and the arguments of your fellow jurors, you
17 entertain a conscientious view that differs from the others,
18 you are not to yield your conviction simply because you are
19 outnumbered. Your final vote must reflect your conscientious
20 judgment as to how the issue should be decided. Your job is
21 to reach a fair conclusion from the law and the evidence.

22 Each of you has to decide the case for yourself
23 after you considered the evidence with your fellow jurors. If
24 the Government succeeds in meeting its burden of proof beyond
25 a reasonable doubt, your verdict should be guilty. If the

Jury Charge

1474

1 Government fails to meet its burden, your verdict should be
2 not guilty.

3 Either way, your verdict as to each count has to be
4 unanimous. All of you must reach the same conclusion as to
5 each count.

6 Now, the way it's going to work, when you've reached
7 a unanimous verdict, your foreperson will go ahead and sign a
8 note saying, "We have reached a unanimous verdict." That note
9 will be handed to the marshal outside your door. The marshal
10 will bring it in to me. There is also a verdict form which
11 you will have. That should not given to the marshal. The
12 verdict form is quite simple. It goes through each count:
13 Count One, Count Two, Count Three all the way up to
14 Count Eight and it asks you as to each count it has the name
15 of the count under it just so you can tie it into the
16 instructions and it says, "How do you find the defendant, not
17 guilty or guilty?" and you just put a check mark where your
18 foreperson does. The only exception to that is as I mentioned
19 to you during the instructions on Count Seven if you find the
20 defendant guilty on Count Seven, that's the using and
21 possessing of a firearm, then it says there's a question that
22 you need to answer if you find him guilty and that is if he
23 brandished the firearm, no or yes, and you will check
24 whichever one of those you happen to find. But that's the
25 only question you get asked aside from not guilty or guilty on

Jury Charge

1475

1 each count of the indictment.

2 So what'll happen, once I've gotten your note saying
3 you reached a unanimous verdict, and the marshal brings it to
4 me, your foreperson will be carrying the signed verdict form.
5 I will confirm with you that you have reached a unanimous
6 verdict and then I'll take the verdict form from the
7 foreperson, look it over, and then I will do what we call
8 "publishing the verdict."

9 Remember that the parties and I are relying on you
10 to give full and conscientious deliberation and consideration
11 to the issues and evidence before you. Your oath sums up your
12 duty and it is this: Without fear or favor, you will truly
13 try the issues between these parties according to the evidence
14 given to you here in court and under the laws of the
15 United States.

16 All right. Let me have the Court officer brought
17 forward.

18 After we swear the Court officer, ladies and
19 gentlemen, I'm going to have you retire to start your
20 deliberations. But I'd like Mr. Coffey, Ms. Mosery, and
21 Mr. Casane, if I'm pronouncing it right, to stay here for a
22 minute.

23 Please administer the oath.

24 COURTROOM DEPUTY: Please raise your right hand.

25 (Deputy U.S. Marshal sworn by the courtroom deputy.)

Jury Charge

1476

1 COURT SECURITY OFFICER: I do.

2 THE COURT: Before you take them, hang on one
3 minute.

4 Let me see the attorneys at sidebar for just a
5 second.

6 (Continued on the next page.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Sidebar

1477

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: This is not a redo of the charge
5 conference, but if there is anything I did that I was
6 inconsistent with the charge now is the time for me to correct
7 it.

8 Is there anything like that?

9 MS. NGUYEN: No, Judge.

10 MR. GUADAGNINO: No, Judge.

11 THE COURT: Thank you of the.

12 (Sidebar discussion concludes.)

13 (Continued on the next page.)

14

15

16

17

18

19

20

21

22

23

24

25

Colloquy

1478

1 (In open court.)

2 THE COURT: All right. The Court officer may take
3 the jury to the place of deliberation. Thank you.

4 COURT SECURITY OFFICER: Thank you, your Honor.

5 (Jury exits courtroom at 4:42 p.m.)

6 THE COURT: Everyone be seated. Mr. Coffey
7 Ms. Mosery and Mr. Casane, you know, I don't want to you feel
8 bad that you've put in this whole trial and you're alternate
9 jurors. First of all, it is not at all the clear that you
10 will not be called on in trials. I've done, I would say,
11 about half the time we do need an alternate or two or three
12 once deliberations start. And I also want you to know we very
13 much appreciate you being here because we couldn't do the
14 trial without the security of knowing that you're here to back
15 up the jury if that becomes necessary. As I said, it often
16 does.

17 I think what I'm inclined to do but I'll hear the
18 parties at sidebar if you have a different view is I'm
19 inclined to let you go now home with the same admonitions that
20 we've had through out, that is, you can't talk about the case
21 to anyone or anybody, and you can't look at any media and you
22 can't do my research, nothing like that. But I would like you
23 back here at 9:30 tomorrow morning we will take you to a
24 different place. Ms. Clarke will show you where that is and
25 bring a book and we'll have you here as long as necessary to

Colloquy

1479

1 see if we need you because there's a, like I say, certainly,
2 reasonable chance that we will need one or more of you, all
3 right.

4 All right with the parties?

5 MR. GUADAGNINO: Fine, your Honor.

6 MS. NGUYEN: Yes, your Honor.

7 THE COURT: All right. Again, thank you for your
8 efforts and have a very good night.

9 (Alternate jurors retire from the courtroom at
10 4:44 p.m.)

11 Okay. We are in recess until we hear from the jury.
12 My general practice is I let them go as late as they want to
13 go. I imagine some time between 5:30 and 6:30. We'll here
14 that they want to come back tomorrow. Whenever they want to
15 go, we'll let them.

16 Thank you all for your efforts.

17 MS. NGUYEN: Thank you.

18 MR. GUADAGNINO: Thank you.

19 THE COURT: Stand by.

20 (A recess in the proceedings was taken.)

21 (In open court; 4:57 p.m.)

22 (Court's Exhibit 1 was marked in evidence as of this
23 date.)

24 THE COURT: Okay. We have Court Exhibit 1. "To the
25 judge: We are ending the day and returning tomorrow.

Colloquy

1480

1 Sincerely, the jury." Whoever that is. Let's have them.

2 We'll send them home. It's been a long day.

3 (A brief pause in the proceedings was held.)

4 (Defendant enters the courtroom at 5:05 p.m.)

5 (Jury enters courtroom at 5:05 p.m.)

6 THE COURT: All right. Everyone be seated. Ladies
7 and gentlemen. We have your note and recognizing it has
8 certainly been a long day it is, of course, fine for you to go
9 home.

10 There is a couple of things I wanted to mention.
11 The note was signed by "The Jury." I don't know if that means
12 you haven't picked your foreperson, or the foreperson decided
13 to sign it, "The Jury." It's fine, I don't need to know now.
14 I just want to make sure when you come back tomorrow you do
15 first thing is pick a foreperson.

16 The second thing I want to say is when you come back
17 tomorrow you can go right into 8-A, right into the jury room.
18 However, you may not start your deliberations until all 12 of
19 you are present there, okay. So if some of you get there,
20 talk about something else until everyone is assembled that's
21 very important because you all have to deliberate together,
22 okay?

23 And then the last thing I want to say is the usual
24 please don't talk about the case especially now when we've
25 gotten this far in the case to anybody. Do not do any

Colloquy

1481

1 research. Don't bring anything from the outside world by way
2 of knowledge into the jury room and no communicating on
3 Instagram or tweets or anything else about this case. Put it
4 out of your mind until all 12 of you are back in the room
5 tomorrow and do try to get there by 9:30 so you're not holding
6 up fellow jurors.

7 Thanks for putting in the hard day's work today,
8 hard day's work the last two weeks. I appreciate it and I'll
9 see you tomorrow.

10 (Jury exits courtroom at 5:07 p.m.)

11 THE COURT. Okay. I want to make sure that the
12 parties are compiling the exhibits and will, of course, send
13 in a copy of the instructions and a copy of the verdict form
14 for them. If there is any dispute about what exhibits should
15 go in, you'll let me know but I doubt there will be. It's up
16 to the parties to decide if you want to send in a copy of the
17 revised indictment. It's contained in the instructions, so I
18 don't think they really need to but if you both agree that
19 they should have to. It's up to you.

20 MS. NGUYEN: I don't think it's necessary since it's
21 in the instructions.

22 MR. GUADAGNINO: That's fine, your Honor.

23 THE COURT: All right. So we'll do without it.

24 Have a good night, get some rest. Thanks for your hard work.

25 MS. NGUYEN: Thank you.

Colloquy

1482

1 MR. GUADAGNINO: Thank you.

2 (WHEREUPON, this matter was adjourned to July 7,
3 2021, at 9:30 a.m.)

4

5

* * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

FOR THE GOVERNMENT:

PAGE:

FOR THE DEFENSE:

COURT EXHIBITS:

Court's Exhibit 1 was marked in evidence as of 1479
this date.....

SUMMATIONS, REBUTTAL, AND JURY CHARGE:

Summation - Ms. Nguyen.....	1316
Summation - Mr. Guadagnino.....	1355
Rebuttal Summation - Mr. Buford.....	1393
Jury Charge.....	1410
